Supl 94. 19. Argd NH S

9 Otto p. 295
Oct. 7. 1878

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 254.

THOMAS J. PHELPS, ASSIGNEE, APPELLANT,

vs.

A. R. McDONALD AND WILLIAM WHITE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED OCTOBER 16, 1876.

Courts of Delaplaine 2 Cranch 401
7 L Ed 872

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1 *Original bill.—Filed Sep.* 8, 1874.

In the supreme court of the District of Columbia.

THOMAS JEFFERSON PHELPS, COMPLAINANT, } In equity. 3910. Docket 14.
vs.
AUGUSTINE R. MCDONALD. }

The complainant shows to the court:

1. That he is a resident of Covington, Kentucky, and brings this bill in his character of assignee in bankruptcy of the defendant, Augustine R. McDonald, under an appointment from the southern district court of the State of Ohio, as hereinafter set forth.

2. That the defendant was at one time a resident of the southern district of Ohio, but, as this complainant is informed and believes, no longer resides there; nor does this complainant know where he resides, but is informed and believes that he has been seen in different parts of
2 the country, and for some time in Washington City, where he was prosecuting the claim hereinafter mentioned.

And the complainant brings this suit in this jurisdiction because he seeks to reach a fund claimed by the defendant which is in the District of Columbia, where the said defendant must necessarily be in person, or by attorney, to show his right to the same.

3. That in the district court of the United States for the southern district of Ohio, on or about the 19th day of December, 1868, the defendant, Augustine R. McDonald, filed his petition in bankruptcy, stating that he was unable to pay his debts, offering to surrender all his estate and effects for the benefit of his creditors, and praying to be adjudged a bankrupt, and to have a discharge from all his debts, and such
3 proceedings were thereupon had that on the 5th day of January, 1869, the said court appointed this complainant assignee in bankruptcy of the said defendant, and on the 12th day of February, 1869, the said assignee, in conformity with the act of Congress, received from the register in bankruptcy an assignment of all the estate, real and personal, of the said bankrupt, including all the property of whatever kind of which he was possessed or in which he was interested or entitled to have on the 19th day of December, 1868, with all his deeds, books, and papers relating thereto, and on the 17th day of March, 1869, a final certificate of discharge was issued to him, the said McDonald; all of which will more fully and at large appear by reference to the record of said cause herewith filed and made a part of this bill, marked Exhibit No. 1.

4. That at the time of filing the said petition and of making the
4 said assignment, the said McDonald had a just and valid claim against the United States, as will hereinafter be more particularly stated, growing out of transactions between him and the Government of the United States, and of injuries done to his property by the authorities of the United States in the course of said transactions, between the 13th day of April, 1861, and the 9th day of April, 1865, and the said McDonald was and is a British subject, and diplomatic negotiations having for a long time been pending between the Government of the United States and Great Britain, for the settlement of the claims of their respective citizens and subjects against the two governments respectively, a treaty was on the 8th day of May, 1871, concluded between the Governments of the United States and Great Britain, by which provision was
5 made for the appointment of a commission to examine and adjudicate all claims by the subjects and citizens of either power

against the government of the other, with certain limitations, which commission was duly organized, and proceeded to hear and determine such claims, and the said McDonald prosecuted his said claim, and the said commission made an award in the words following, to wit:

[Office of the Mixed Commission on British and American Claims under the treaty of May 8th, 1871.]

NEWPORT, RHODE ISLAND,
September 25th, 1873.

AUGUSTINE R. McDONALD
vs.
THE UNITED STATES. } No. 42 & 334.

We award the sum of one hundred and ninety-seven thousand one hundred and ninety dollars, to be paid in gold by the Government
6 of the United States to the Government of her Britannic Majesty in respect of the above claim.

(Signed) L. CORTI,
RUSSELL GURNEY,
Commissioners.

And this complainant is informed, and believes it to be true, and charges the fact to be, and under and in pursuance of said award, the said sum of $197,190.00 will be paid from the Treasury of the United States, through some agent of Her Britannic Majesty's Government in the city of Washington, in the District of Columbia, on or immediately after the 26th day of September next, to the said McDonald, and by him will be received to his own use unless prevented by the interposition of this honorable court.

5. And this complainant further shows that the claim of the said defendant, McDonald, as stated in his memorial and argument ad-
7 dressed to the said commission, a copy of which will be hereto annexed and marked Exhibit No. 2, No. 3, was of the following character, to wit:

The said McDonald in the year 1864, having received the promise of protection and necessary permits from the Treasury Department of the United States authorizing him to purchase cotton in the insurrectionary States, and an autograph letter from the President of the United States to the officers of the Army and Navy, directing them to assist the claimant as opportunity offered in getting out such cotton as he might purchase, proceeded to purchase large quantities of cotton in the States of Louisiana and Arkansas, then in insurrection against the Government of the United States, but before he could remove the same to market the Congress of the United States, by law, prohibited the transfer
8 of cotton from within the Confederate lines, and the cotton of the claimant being found within the Confederate lines was burned by troops of the United States.

6. That the said McDonald in his petition in bankruptcy in describing the said claim among his assets, as by law he was required to do, described the same in the following words, as will appear by reference to schedule B, 3, in the record hereinbefore exhibited and marked Exh. No. 1, viz: "Claim against General Osborne of the United States Army and others, for burning, in January and February, 1865, from 1,000 to 2,000 bales of my cotton in Arkansas and Louisiana," and described in

no other way, and in no other place, any claim against any person, officer, or government for the destruction of cotton, except that in
9 the duplicate schedule filed in the office of the register in bankruptcy of said court the quantity of cotton is stated at 7,000 or 8,000 bales.

7. That on or about the 27th day of March, 1869, and again on the 13th day of September, 1869, this complainant as assignee aforesaid applied by petition *for* the said district court for an order to sell certain accounts, notes, judgments, &c., of the bankrupt, and having obtained the said order, sold the same and reported the same to the court on the 27th day of September, 1869. Copies of the petition, order, and report of sale are hereto annexed, marked Exhibit , from which it appears that the complainant as assignee sold the uncollected accounts belonging to the estate of the said A. R. McDonald to W'm White for the sum of twenty dollars; and this complainant is informed and believes that the said Augustine R. McDonald alleges that the said claim against the United States was included in the said sale, and
10 was purchased by the said White, who afterwards assigned the claim to the said McDonald, and thus that he holds the same free from any right or claim in and to the same of this complainant.

8. But this complainant submits to the court that any pretension that the said defendant holds the claim otherwise or by any other title than that of the first inception is wholly untenable:

First. Because by the rules of the said mixed commission, a copy of which is hereto annexed it is provided that in presenting the memorial by the claimant, "If any transfer of the claim or any part thereof has occurred, the nature and mode of such transfer must be stated"; and the said claimant, the defendant, Augustine R. McDonald, has not in his memorial stated any transfer, and by implication denies any change of title.

11 Second. Because in his said schedule he has given no sufficient description of the said claim, for he describes no claim against the United States, but only a claim against certain officers of the United States, thus, by implication, denying the liability of the United States for their act, and this implication is the stronger, because, in a subsequent part of the schedule, he inserts "a claim against the United States for stealing 1,323 bales of my cotton in 1865," and the real claim against the United States, not being described in the schedules, was not included in the order of sale, and not sold.

Third. That in the said description of a claim for the burning of his cotton, he has not stated particulars which were essential to give it any validity whatever, for this complainant is advised that neither the United States nor their officers were liable for the destruc-
12 tion of cotton found in the enemy's country, to whomsoever belonging, but the liability in this case arose solely from the encouragement and enducements held out to the claimant by the President and Treasury Department, and the violation of the promises of protection made to him by them; and that the award in this case was made upon the special facts set forth in the memorial and evidence, viz, the claimant had from the government permission to buy cotton, promises of protection for it, and an order from the President in person directing officers of the Army and Navy to aid the claimant in getting his cotton out from the so-called confederacy; in fact, that thus he was induced to buy the cotton which was afterwards destroyed by their officers, nothing of all of which appears in the schedule or otherwise in the case.

13 9. And this complainant further shows to the court that, as

will be seen by reference to the record in bankruptcy herewith-before exhibited, the said defendant, McDonald, reported to the court his individual known debts to the amount of $177,380, besides other amounts not ascertained, while upon the schedule of his assets, filed in the office of the register in bankruptcy of the said district court, ten items of his assets, including the claims against Gen'l Osborne and the United States, and officers thereof, for burning and stealing cotton, are reported "worthless." One other claim is reported "doubtful," and the only other item, amount not stated, is reported hypothecated to what evidently appears—and to none of said items did he affix any estimate of their value—to be more than its value.

And this complaint avers that from none of said assets was a
14 single dollar realized, except twenty dollars from the sale herein-before mentioned to William White.

10. And this complainant is informed and believes the fact to be that certain of the creditors of the defendant, McDonald, whose claims are admitted in his schedule of liabilities to be just, have, since the award was made, endeavored to find him, with the view of inducing him to provide, out of the said award, for the payment of his just debts, but, after diligent search, have failed to find him.

And this complainant is advised and believes and avers the fact to be that under the rules regulating the payment of the awards of the said mixed commission, no regard will be paid to any assignment by any claimant made, unless the same shall specifically purport to transfer the award, or some part thereof, and consequently be made sub-
15 sequently thereto, and so the complainant is without power, under the assignment in bankruptcy hereinbefore mentioned, to collect the proceeds of said claim, and is without remedy in the premises and unable to possess himself or the assets of the said bankrupt without the aid of this court.

And this complainant believes and charges the fact to be that the said defendant intends and will, unless prevented by the interposition of this honorable court, collect, by himself, his agents, or attorneys, the said fund, and apply the same to his own use, and thus defeat the just rights of his creditors and of this complainant in the premises.

All of which is contrary to equity and good conscience.

Prayer.

And the complainant prays:

16 1. That the writ of subpœna of the United States may issue, commanding the said defendant to appear in this court and to answer this bill without oath, complainant hereby waiving an answer under oath, and to abide and perform such decree as the court may make in the premises.

2. That the writ of injunction be forthwith issued to restrain the defendant from collecting or receiving the amount of said claim or award, or any part thereof, until the further order of this court.

3. That the said defendant be decreed to have obtained the said award subject to and in trust for the payment of his just debts contained in his schedules filed in the district court of the United States, as hereinbefore stated, and subject to the rights of this complainant as assignee in bankruptcy of his estate and effects.

17 4. That the said defendant be decreed to execute such further deeds as will, under the rules governing the payment of the awards made by the said mixed commission, enable this complainant, in

his character of assignee in bankruptcy, to collect the amount of the said award.

5. That the court will grant such other and further relief as the nature of the case may require, and as the court may deem just.

6. The defendant to the bill is Augustine R. McDonald.

THOMAS JEFFERSON PHELPS.

I do solemnly swear that I have read the bill by me subscribed, and know the contents thereof and that the facts therein stated of my
18 personal knowledge are true, and that the facts therein stated on information and belief I believe to be true.

THOMAS JEFFERSON PHELPS.

Sworn to and subscribed before me this 25th day of August, A. D. 1874, at Cincinnati, in the State of Ohio.

[SEAL.] SAM'L S. CARPENTER,
United States Commissioner in & for the Southern District of Ohio, appointed by the Circuit Court in & for the 6th Judicial Circuit.

Subpœna.

In the supreme court of the District of Columbia, September 8, 1874

THOMAS J. PHELPS, COMPLAINANT,
against
AUGUSTINE R. McDONALD, DEFENDANT. } No. 3910. Equity docket 14.

The President of the United States to Augustine R. McDonald, defendant:

You are hereby commanded to appear in this court at its first special term, occurring twenty days after service of this subpœna, and
19 answer the exigency of the bill under pain of attachment, and such other process of contempt as the court shall award.

Witness: D. K. Cartter, chief justice.

[SEAL.] R. J. MEIGS,
Clerk, &c.

Restraining order.

An original bill, praying an injunction to restrain the defendant from receiving or collecting the amount of claim mentioned in said bill, is this day filed.

Hearing is fixed for the 24 September, 1874, at 12 o'clock m.

Until further order you are hereby restrained as prayed.

By order of the court.

D. C. HUMPHREYS,
Justice, &c.

Attest:

R. J. MEIGS,
Clerk, &c.,
By L. P. WILLIAMS,
Ass't Clerk, &c.

Marshal's return.

OCTO. 14TH, '74.

Not to be found.

A. SHARP, *Marshal.*

OCTO. 27TH, '74.

Serv'd.

A. SHARP, *Marshal.*

20 *Exhibit No.* 1.—*Filed Sep.* 8, 1872.

Petition by debtor.

To the Hon. H. H. Leavitt, judge of the district court of the United States, for the southern district of Ohio:

The petition of Augustine Ralph McDonald, of the city of Cincinnati in the county of Hamilton, and State of Ohio, and district aforesaid, respectfully represents:

That he was a member of the copartnership of S. P. C. Clarke & Co., at Memphis, Tenn., dissolved in 1865; that he and Clarke composed said firm, that said Clarke has already been declared a bankrupt; that your petitioner has resided in Cincinnati for eighteen months next immediately preceding the filing of this petition within said judicial district; that he owes debts exceeding the amount of three hundred dollars, and is unable to pay all of the same in full; that he is willing to
21 surrender all his estates and effects for the benefit of his creditors, and desires to obtain the benefit of the act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867.

That the schedule hereto annexed marked A, and verified by your petitioner's oath, contains a full and true statement of all his debts, and (as far as it is possible to ascertain) the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said act.

That the schedule hereto annexed marked B, and verified by your petitioner's oath, contains an accurate inventory of all his estate, both real and personal, assignable under the provisions of said act.

That said schedules contained a full and true statement of the
22 liabilities and assets of the said late copartnership of S. P. C. Clarke & Co., as far as it is possible to ascertain separately stated from his own liabilities and assets.

Wherefore your petitioner prays that he may be adjudged by the court to be a bankrupt within the purview of said act, and that he may be decreed to have a certificate of discharge from all his debts provable under the same.

AUGUSTINE RALPH McDONALD.

JORDAN & JORDAN,
Attorneys for Petitioner.

Oath.

UNITED STATES OF AMERICA,
Southern District of Ohio, ss:

I, Augustine Ralph McDonald, the petitioning debtor mentioned and described in the foregoing petition, do hereby make solemn oath that

the statements contained therein are true, according to the best of my knowledge, information, and belief.

AUGUSTINE RALPH McDONALD.

23 Subscribed and sworn to before me this 19th day of December, A. D. 1868.

F. BALL, *Register.*

Petition by debtor.—Schedule A (1).

Statement of all creditors who are to be paid in full, or to whom priority is secured according to the provisions of the 28th section of said act.

Of S. P. C. Clark & Co.: Nothing in this schedule known to petitioner.
Of Augustine Ralph McDonald: Nothing in this schedule known to petitioner.

AUGUSTINE RALPH McDONALD,
Petitioner.

Petition by debtor.—Schedule A (2).

Creditors holding securities.

None as against S. P. C. Clarke & Co.
None as against Augustine Ralph McDonald; see schedule A 3.

AUGUSTINE RALPH McDONALD,
Petitioner.

24 Petition of debtor. Schedule A (3).

Creditors whose claims are unsecured.

Liabilities of S. P. C. Clarke & Co., of which Augustine R. McDonald was a partner.

Reference of ledger or voucher.	Name, residences, and occupations of creditors.	Where and when contracted.	Amount.	Nature and consideration of the debts.
	Burley & Fagey	Memphis	131 96	
	S. Mansfield & Co	"	123 80	Drugs.
	Eastland & Stanley	"	1,336 18	Crockery, assigned to W'm White & Co.
	Blelock & Co.	"	43 51	M'd'se.
	C. H. Ebberts & Co	"	572 63	Liquors, note of A. R. McDonald.
	G. H Blood & Co	"	34 00	M'd'se.
	A. P. Burdell & Co	"	1,611 92	Groceries, in note of A. R. McDonald.
	Cha's Mengel & Co	"	7 50	M'd'se " "
	W. S. Hatchell	"	333 88	M'd'se.
	John H. Mitchell	"	599 44	M'd'se.
	Thomas Demmons	"	121 07	Painting.
	Mayer, Landaure & Pollock	"	79 25	M'd'se.
	R. Calvin	"	23 37	Work.
	Dawson	"	20 00	
	A. T. Shapleigh & Co	S't Louis, Mo	1,153 78	Judg't for $1,500 in July, 1868, in municipal court, Memphis.
	Chrystal & Co	Memphis	51 13	M'd'se.
	W. P. Goodlett	"	9 00	Work.
[25]	W. H. Kennedy	Memphis	548 47	Assigned to F. Prescott & Co., Memphis. M'd se.
	J. Meyberg	S't Louis	674 90	Hats & caps.
	E. A. & J. R. Fiskey	"	797 70	M'd'se.
	W'm Spear & Co	"	651 75	Tobacco (acceptance of S. P. C. Clarke & Co).
	Field, Sandford & Wells		218 11	Crockery.

Schedule A—Continued.

Reference of ledger or voucher.	Name, residences, and occupations of creditors.	Where and when contracted.	Amount.	Nature and consideration of the debts.
	Saunders Bro's & Co	S't Louis	168 25	M'd'se.
	Capt. Holmes	.....	9 66	
	C. F. Chamberlain & Co.	Memphis	29 95	Stationary.
	Dennison & McNear	"	96 50	Hardware.
	North, Murphy & Mason	"	536 87	Notions.
	Henry Wade & Co	"	16 50	
	Rozenheim & Lewis	S't Louis	593 03	Part open a/c and part millinery, a'cept. of Clarke & Co.
	Denneson & McNear	Memphis	2,423 53	Note assigned to W'm White. Hardware drafts of A. R. McDonald. Acceptance of S. P. C. Clarke & Co.
	Jones, Brown & Co	Memphis	4,166 66	Believe these notes were cancelled by return of leases.
	Col. Thomas Stevens	Memphis	150 00	Military permit.
	Nepkon & Reakart	"	1,200 00	M'd'se.
	A. P. Curry & Co	"	383 25	Judg't in Shelby Co., Tenn.,
	Wear & Hickman	S't Louis	1,916 32	Acceptance assigned to White & Co., assig't disputed.
	J. T. McCoy	Memphis	210 62	Work.
	W. E. Houston	"	337 62	Military permit.
[26]	J. T. Barnaby	Memphis	221 19	Military permit.
	H. E. Goodell	"	346 13	Bookkeeper a/c not due.
	R. B. Williams	"	20 40	
	N. E. Duncan	"	33 14	Clerk.
	T. D. Yalley	"	52 00	
	D'r E. S. Walker	"	315 48	
	Jones, McKenzie & Co	"	167 05	M'd'se.
	Bartlett, Gold & Heath	"	14 00	do.
	Bast & Pollock	S't Louis	14,158 35	Dry-goods, judg't in Camden, Wash'n Co., Ark.
	S. Z. Coblents	"	1,785 00	Hats & caps.
	Freedman & Howenthal	"	962 20	Notions, note of S. P. C Clarke & Co.
	H. O. Pierce & Co.	"	1,390 90	Hats & caps.
	Henry Bell & Son	"	11,435 75	Dry-goods
	Bast & Ready	"	4,930 69	Clothing.
	D. H. Evans	Memphis	181 83	Liquors.
	S. Happeck	"	194 00	M'd'se
	Ramsey, Adams & Weaver	"	6 00	
	T. H. Clarke & Co	"	3 00	
	John Mitchell & Co	"	4 00	
	W. J. Murphy	"	27 68	
	Ed. Warsham	"	55 61	
	G. Potter	"	10 00	
[27]	Schwab & Co	Memphis	198 00	M'd'se.
	Mariner & Curtis	"	40 00	
	Erick & Lloyd	"	106 65	M'd'se.
	L. Krearner	"	15 00	Millinery.
	Jaspeck Specht	"	49 00	Confectionary
	M. Friedlander	"	148 05	Boots & shoes
	Solomon Halley	"	24 00	
	Walker Bro's & Co	"	25 50	Dry-goods.
	E. Robins & Bradley	"	4 00	
	Young & Bro	S't Louis or Memphis	48 05	
	S. C. Foof	Memphis	60 75	Painting.
	J. H. Choate & Co	"	119 94	Hardware, note of A. R. McDonald.
	Wells & Co	"	42 55	M'd'se.
	S. Loeb & Co	"	269 19	"
	Nipkin & Reakort	"	16 65	"
	Taylor, McEwers, Duke & Co.	"	39 00	Dry-goods
	Merril, Alder & Co	"	1,037 19	Groceries.
	S. H. Lonesaline & Bro	"	1,397 07	Dry-goods, assessed to W'm White & Co.
	L. Rocko, *Rocco*	"	10 50	Confectionary
	Henry Folson	"	104 50	Clothing, White & Co.
	D. A. January	S't Louis	2,600 00	Groceries.
	Freelander & Bro	Memphis	430 13	Boots & Shoes.
[28]	Freedman & Bros	Memphis	120	Boots & shoes.
	Loeb and Selig	"	500 00	M'd'se.
	Memphis & S't Packet Co	.....	200 00	Freight bill.

***Schedule A*—Continued**

Reference of ledger or voucher.	Name, residences and occupations of creditors.	Where and when contracted.	Amount.	Nature and consideration of the debts.
	Neatherly & Connell	S't Louis		180 or 1,800, m'd'se.
	John Donovan, Memphis, clerk of law court.	1865 & future		Due for costs on various cases, am't unknown.
	A. Alston, Memphis, clerk chancery court.	" "		Due for costs in chancery court vs. S. P. C. Clark & Co., am't unknown.
	Patrick Winters, Memphis, sh'ff Shelby Co., Tenn.	" "		Due for costs on suits against S. P. C. Clark & Co., am't unknown.

Individual liabilities of Augustine Ralph McDonald.

				Gold.	
	Henry Wynne, Newburn	Dyer Co., Tenn.,	1862..	1, 222 00	Tobacco.
	M'r's Mary J. Light	" "	1862..	449 00	"
	M. O. B. Goulden	" "	1862..	1, 025 00	"
	Dan'l E. Parker	" "	1862..	3 to 6, 000 00	"
	Miss Caroline E. or E. E. Smith	" "	1862..	1, 623 00	"
	M'r's Mary E. & Gen'l T. H. Bell	" "	"	1, 200 00	"
	James Tucker	" "	"	1, 300 00	"
	Geo. S. Tucker			1, 373 00	
	Major Albert G. Harris, of Harris, Miller & Co.	Cincinnati		800 00	"
	Peter B. or C. Marley	Neakly Co., Tenn		1, 000 00	"
				Currency.	
[29]	A. P. Burditt & Co	Memphis		11, 000 00	M'd'se notes.
				Currency.	
	C. C. Mengall & Co., S't Louis, Mo.	May & June, 1865		2, 800 00	" "
	C. H. Ebbarts & Co., Memphis	....do. currency		7, 000 00	" notes & judg't.
	E. Ackerman & Co., Memphis	....do. " about		1, 000 00	" "
	J. C. Forbes, New Orleans	....do. " "		600 00	" "
	W'm Elliott, N. York	....do. " "		17, 000 00	" judg't in Montreal, Canada, 1857.
	E. L. Watson, Jacksonport, Ark	....do. " "		300 00	Borrowed money.
	W'm B. Rugland & Co., Memphis	....do. " "		314 00	Note disputed.
	Rugland Bros. & Co., "	1867, "		80 00	Boots & shoes.
	T. W. Brown, "	" "		2, 500 00	Legal services } Disputed.
	Brown, Donney & Tyler	" "		250 00	" " }
	T. B. Micon, "	" "		5, 000 00	Disputed claim for law.
	Haines, Heath & Lewis, "	"			Unrendered bill, law services.
	Haines, Stockton & Homes	"			Do. do.
	Heath, Lewis & Frazer, Memphis	"			Do. do.
	Semmes & Mott, N. Orleans	"			Do. do.
	Haines, Moise & Co., "	"			Do. do.
[30]	W. C. McDonald, Montreal, Ca				$3,500 in gold note in 1864, for balance due on settlement of partnership in 1862; also nine thousand pounds sterling remitted to Baring Bros., London, Eng., Nugert's draft on Arckenberg & Bryant, New York, about $10,000 gold, and my draft on John Bryan for $4,000, paid by W. C. McDonald. Agreement made in July, 1865, is hereby . I owed him over & about $51,000 in gold. Since then he paid for me about $15,000 in gold. Agreement then made that all payments in currency, at the rate of 1.40, & 6 per cent. interest.
[31]	W'm White & Co., Cin'ti, O			1, 020 00	Rule dated Aug. 11, 1868, borrowed money.
	J. J. Diller, Holly Springs, Miss.	About		1, 000 00	Services and balance on draft on S. P. C. Clark & Co., judg't in Washington Co., Ark., & collected $600.

Supposed to hold notes or obligations of A. R. McDonald.

Claim in currency and interest about $100,000.

This claim is about $65,000 in gold.

Schedule A—Continued.

Reference of ledger or voucher.	Name, residences, and occupations of creditors.	Where and when contracted.	Amount.	Nature and consideration of the debt.
			Gold.	
	P. Rogan, Cin'ti, O.....	About.....	25 00	Balance on rent of room & board, July, 1867.
	Judge Henry S. Lee, now judge law court, Memphis.	.....	.....	Contingent claim for law services, am't unknown, and abandoned.
	Hepburn & Lee, Memphis.....	.....	.....	Do.
	S. P. C. Clarke, late of S. P. C. Clarke & Co., supposed to be in S't Louis, Mo.	.....	.....	Your petitioner, A. R. McDonald, being formerly a member of said firm, supposed that he was in no way indebted to said Clark, as his former partner, but enters his name to avoid any doubt arising thereafter.

32 *Addenda to individual liabilities.*

Samuel Downer, j'r, Boston, Mass	1851 to 1857, about.....	1,000 00	Oils.
Cushing & Clapp,	" " "	1,000 00	Note, groceries.
Elliott & Gregg,	" " " "	1,500 00	" m'd'se
Dana, Tanar & Gregg,	" " " "	1,200 00	Groceries.
W. F. H. Whitemore & Co.,	" " " "	2,600 00	Oils, or thinks notes.
Z. Southard & Co.,	" " " "	700 00	"
E. C. Milliken & Co.,	" " " "	800 00	"
Pearce & Bacon,	" " " "	1,100 00	Groceries.
Adelph Davis,	" " " "	500 00	Fruits.
Dan'l Draper & Co.,	" " " "	500 00	"
Dutton, Richardson & Co.,	" " " "	1,000 00	Dry-goods, thinks notes.
John Preston & Co.,	" " " "	300 00	Chocolate.
Little & Osborne,	" " " "	500 00	Leather.
W'm B. Spooner & Co.,	" " " "	1,400 00	Do.
Porter, Loring & Co.,	" " " "	700 00	Drugs.
Reede, Wade & Co.,	" " " "	1,000 00	Liquors.
Kidder & Co.,	" " " "	900 00	Oils.
Bishop & Co.,	" " " "	500 00	Candles.
Sanford & Howland, New Bedford, Mass.	" " "	2,000 00	Oils.

AUGUSTINE RALPH McDONALD,
Petitioner.

33 The judgment obtained by William Elliott in Montreal, Canada, in 1857, for about $1,700, was on consideration of the above claims, which he alleges were assigned to him. Judgment was obtained against me by remissness on my part, but I don't know whether real assignments of above claims had been made to Elliott by the above named parties. The claim of Elliott is included in the schedule herein marked A in the margin.

AUGUSTINE RALPH McDONALD,
Petitioner.

34 Schedule A (4).

Liabilities on notes or bills discounted, which ought to be paid by the drawers, makers, or acceptors.

As to S. P. C. Clark & Co.—W'm Spear & Co., S't Louis. S't Louis, Ap'l to June, 1865, 651.75, tobacco acceptance of the firm.

None as to Augustine Ralph McDonald. C. H. Ebberts & Co., Memphis.

For liabilities on notes the same are specifically stated in Schedule A 3, as to the firm and A. R. McDonald separately.

AUGUSTINE RALPH McDONALD,
Petitioner.

Schedule A (5).

Accommodation paper.

None that petitioner knows of, either as to the firm or himself.

AUGUSTINE RALPH McDONALD,
Petitioner.

35 *Oath to Schedule A.*

UNITED STATES OF AMERICA,
Southern District of Ohio, ss:

On this 19th day of December, 1868, before me personally came Augustine R. McDonald, the person mentioned in and who subscribed to the foregoing petition and schedule, marked A, respectively, and who, being by me first duly sworn, did declare the said schedule to be a statement of all his debts, etc., in accordance with the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867.

AUGUSTINE RALPH McDONALD.

Attest.

T. BALL, *Register.*

36 Petition by debtor. Schedule B (1).

Statement of all real and personal estate and effects whatever which are now in the possession, enjoyment, or under the control of the petitioner, or which are held by any other person in trust for his use, or to the possession or enjoyment of which he is entitled at the date of filing petition.

Interest in lands: Estimated value.—None of S. P. C. Clarke & Co. None of Augustine Ralph McDonald.

AUGUSTINE RALPH McDONALD,
Petitioner.

37 Schedule B (2).

Personal property.

(INSTRUCTIONS.—Enter the personal property of the petitioner in the following order: 1. Cash on hand; 2. Bills of exchange, promissory notes, or securities of any description (each to be set out separately); 3. Value of stock in trade, nature and location of business; 4. Household goods and furniture, household stores, wearing apparel, and ornaments of the person; 5. Books, prints, and pictures; 6. Horses, cows, sheep, and other animals; 7. Carriages and other vehicles; 8. Farming stock and implements of husbandry; 9. Shipping and shares in vessels; 10. Machinery, fixtures, and apparatus used in business, with the place where each is situated; 11. Goods or personal property of any other description, with the place where each is situated.)

1. None.
2. None.
3. None.
38 4. One suit gray clothes, pants & coat; do. of blue pants, vest, & coat; one brown coat, overcoat, & waistcoat; three p'r drawers; three p'r undershirts; 7 shirts, cotton and woolen; 5 p'r socks; 4 handkerchiefs; 1 p'r suspenders; 1 p'r boots; 1 black hat; p'r gloves; 1 comb; two brushes; neck-ties; carpet bag and trunk.
5. None.
6. None.
7. None.
8. None.
9. "
10. "
11. "

AUGUSTINE RALPH McDONALD,
Petitioner.

39 Schedule B.

Choses in action.

(INSTRUCTIONS.—Enter the items in the following order: 1. Debts due petitioner on open account; 2. Stocks in incorporated companies, and interest in joint-stock companies; 3. Policies of insurance; 4. Unliquidated claims of every nature, with their estimated value.)

Assets of S. P. C. Clark & Co., of which Augustine Ralph McDonald was a partner.

	Description.	Value.
No. 1.	M'rs Sallie E. Bishop	123 00
	M'r's Kelly York	26 17
	M'r's H. B. Smith	11 65
	W. R. Chandler	103 50
	W. B. Sparks	22 66
	H. Farkesly	25 07
	Geo. R. Wade	51 28
	Barnably & Ellis	1,451 52
	Elizabeth Brooks	193 06
	Sell Howell	9 50
	W. Green	51 50
	Eliza W. Brooks	180 66
40	M'rs Shilby	9 10
	Julius Chrisholm	5 95
	W. J. Coleman	3 40
	S. F. Hailman	102 73
	Earickson, Riggs & Co	7 70
	George W. Crouch	5 00
	D. F. Goodyear	3 00
	M'r's G. Nolson	23 15
	H. J. Brooks	20 75
	Common law court	3 05
	J. Chrisholm	43 19
	D'r Pelvin Wright	3 63
	D'r Carpenter	20 03

M'r's E. Matley	29 00
W. C. Kirkland	9 05
Moorehead	5 50
Thomas Leach	6 71
Thomas O'Keefe	15 00
Henry Jones (colored)	2 73

The funds in hands of law court, Memphis, attached by various
41 creditors, and deposited without security in the Gayon Savings Bank (failed). This fund will go to Eastland & Stanley, J. H. Louenshine & Co., Near & Hickman, and Dennison & McNear, but who have sold their claim to W'm White & Co., interest for two years with only $\frac{5}{100}$.

AUGUSTINE RALPH McDONALD,
Petitioner.

Fund in chancery court in Memphis, attached by Henry Bell & Co., and other creditors. The attachment of Bell can be defeated and this will secure amount for other creditors, 4,200.

Amount due by H. C. More at the La Grange store and not accounted for (worthless), 2,000.

Indefinite amount due by H. E. Goodet, worthless.

Amount attached by H. E. Goodett & T. D. Tully, in chancery court, Memphis, about $200 to $300—300.

Individual assets of Augustine Ralph McDonald:

Claim against J. M. Brooks and others, assigned J. M. Hill in
42 trust to *to* pay creditors in July, 1875, preferring W. C. McDonald for $51,000 in gold, and then my individual debts; and if any balance, is to be paid to such of the claims against S. P. C. Clark as were legal debts against myself.

Claim nominally for $2,700.00; parties broken and worthless. The judgment of *of* the 5th dist. court of Louisiana against Elliott & Johnson was rendered for $20,000. They are execution proof and declare they will pay nothing.—Worthless.

Judgment of law court, Memphis vs. J. H. Saunders, of Arkansas, for, debt, $63,000. Saunders worthless & execution proof.—Worthless.

Claim vs. J. Frank Hicks for receiving several hundred bales of my cotton in 1865, that was stolen. Execution proof, and claim useless, as witness to prove receipt is dead.—Worthless.

Claim against officers of Confederate bureau, and G. M. Gill
43 & others, for stealing and receiving several hundred bales of my cotton in 1865. Claim valueless, assigned to A. P. Burdett for ac't of creditors.—Worthless.

Claim against General Osborne, of U. S. Army, and others, for burning, in January or February, 1865, from 1,000 to 2,000 bales of my cotton in Arkansas and Louisiana.

Claim against United States or officers thereof for stealing 1,323 bales of my cotton in 1865.

Claim against the United States Government for expenditures of over $100,000 in saving cotton in States of Arkansas and Louisiana, & also military salvage earned in saving same.—Doubtful.

Claim against William Whist, Rockport, Missouri, for about $6,000.—Worthless, *worthless.*

Claim against one Frazemouth, of Edras, Calloway & Co., Mo., for about $5,000.—Worthless.

Claim against W'm B. Ragland & Co., and Ragland Bro's & Co., for services, about $2,000.—Bankrupts.

T. B. Macon recently commenced suit against me for his fictitious bill of $5,000, and attached check of Edmunds, Pettigrew & Co.,
44 to my order, as agent of W. C. McDonald. Check was remitted to W. C. McDonald, endorsed to his order before a suit was commenced. It was accepted by the bank; marked good by De Soto Bank, Memphis. It was the property of W. C. McDonald. Mecon, in like manner, attached $112, balance of account due W. C. McDonald by Clark, Ely & Co., Memphis. Procured injunction in chancery court in both instances, supposing payments of said am'ts; said matters were so attached on suspicion that they were my property.—Not my property.

In a case by Bast & Pellock and Bast & Ready vs. S. P. C. Clarke & Co., commenced in 1865, in the chancery court, Memphis, proceeds of 115 bales of cotton, the property of W. C. McDonald, in hands of L. H. Terry, were attached on suspicion that they were my property.—Not my property.

Half interest in 187 bales of cotton sold by McChesney to myself.—Worthless, *worthless.*

Debt of S. P. C. Clarke to the firm of S. P. C. Clarke & Co., by account & otherwise, am't not known.—Worthless.

45 One suit of gray clothes—pants & coat.
do. of blue " —pants, vest, & coat.
One brown coat, overcoat, & waistcoat.
Three pair drawers.
do. undershirts.
7 shirts, cotton & woolen.
5 p'r socks.
4 handkerchiefs.
1 p'r suspenders.
1 p'r boots.
1 black hat.
p'r gloves.
1 comb, two brushes.
Neck-ties, carpet-bag, & trunk.

AUGUSTINE RALPH McDONALD.

46 Petition of debtor. Schedule B (4).

Property in reversion, remainder of expectancy, including property held in trust for the petitioner, or subject to any power or right to dispose of or to charge.

Instructions, &c.

S. P. C. Clarke & Co.—None.
Augustine Ralph McDonald.—None.

AUGUSTINE RALPH McDONALD.
Petitioner.

Oath to schedule B.

UNITED STATES OF AMERICA,
Southern District of Ohio, ss:

On this 19th day of December, 1868, before me personally came Augustine Ralph McDonald, the person mentioned in, and who subscribed to, the foregoing petition and schedule marked B, respectively,

47 and who, being by me first duly sworn, did declare the said schedule to be a statement of all his estate, both real and personal, in accordance with the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867.

AUGUSTINE RALPH McDONALD.

Attest:

F. BALL, *Register.*

Petition of debtor. Schedule B (6).

The following is a true list of all books, papers, deeds, and writings relating to my trade, business, dealings, estate, and effects, or any part thereof, which at the date of this petition are in my possession or under my custody and control, or which are in the possession or custody of any person in trust for me, or for my use, benefit, or advantage;
48 and also of all others which have been heretofore at any time in my possession or under my custody or control, and which are now held by the parties whose names are hereinafter set forth, with the reason for their custody of the same:

Books of account of S. P. C. Clarke & Co., consisting of ledger, day-book, cash-book, blotter, sales-book, &c., in hands of Heath, Lewis & Fraser, attorneys, Memphis, Tennessee, left with said persons as attorneys for S. P. C. Clarke & Co.

Nothing in this schedule belonging to A. R. McDonald other than papers filed in the various suits in court.

AUGUSTINE RALPH McDONALD,
Petitioner.

49 *Adjudication of bankruptcy upon debtor's petition.*

In the district court of the United States for the southern district of Ohio.

In the matter of Augustine Ralph McDonald, by whom a petition for adjudication of bankruptcy was filed on the 19th day of December, A. D. 1868. In bankruptcy.

At a court of bankruptcy held in said district on the 19th day of December, A. D. 1868, before Flamen Ball, one of the registers of said court in bankruptcy:

I, the undersigned, a register of said court in bankruptcy, upon good proof before me this day taken, do find that the said Augustine Ralph McDonald has become a bankrupt within the true intent and meaning of the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867; and I do hereby declare and adjudge him a bankrupt accordingly.

F. BALL,
Register in Bankruptcy.

50 *Abstract of proceedings in bankruptcy case.*

District court of the United States for the southern district of Ohio, sct.

In the matter of Augustine Ralph McDonald, bankrupt. In bankruptcy, No. , at Cincinnati, in said district, before Flamen Ball, register.

56 ings had before me in the said case are correctly copied from my docket, to wit:

1869.

Feb'y 18. Petition for final discharge filed & submitted to Hon. H. H. Leavitt for order thereon.

22. Rec'd order from judge to hold final meetings of creditors, March 16, 1869, at 10 a. m.

" Order made to that effect & filed.

" Notices sent "Commercial" & "Chronicle."

24. Certificates to clerk of no claims proved.

Copy filed.

F. BALL, *Register.*

District court of the United States, southern district of Ohio.

In the matter of Augustine Ralph McDonald, bankrupt. In bankruptcy.

To the clerk:

I, Flamen Ball, the register to whom this cause stands referred, do hereby certify that no creditors have proved their claims against said bankrupt.

F. BALL, *Register.*

57 *Certificate for final discharge.*

District court of the United States, southern district of Ohio. In bankruptcy.

In the matter of Augustine Ralph McDonald, bankrupt.

At a court of bankruptcy, held in said district, at the office of the register, No. 6 East Third street, Cincinnati, on the 16 day of March, 1869, before Flamen Ball, esq., register in bankruptcy, the same being the day appointed by the court for the hearing of the application of said bankrupt for a final discharge from all debts provable, under the act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867, and the acts amendatory of said act, and for second and third meetings of creditors of said bankrupt, of which the notices required in that behalf, in accord-

58 ance with the special order of said court, made the 22 day of February, 1869, have been duly given, I, the undersigned, register of said court in bankruptcy, sat at the time and place above mentioned, pursuant to such special order and notices, to take further proof of debts, to hear the final report of the assignee, and also to receive notices from the creditors of said bankrupt of opposition to the discharge of said bankrupt; that no one of the creditors of said bankrupt who have proved their debts were present at said meetings; that no other creditors presented or offered to prove their claims against said bankrupt; that no assets of said bankrupt ever came to the hands of said assignee; that no opposition to the discharge of said bankrupt has been filed before me; that said bankrupt has in all things complied with and obeyed all orders of the court made during the pendency of his application; and that he has conformed to all requirements of law on his

59 behalf required to be done by said act; and, further, that he is

entitled to a full discharge from all his debts proveable under said act, upon his taking the oath required by law.

FLAMEN BALL,
Register in Bankruptcy, Southern District of Ohio.

To Hon. H. H. LEAVITT,
Judge of said Court:

SOUTHERN DISTRICT OF OHIO, *ss:*

Augustine R. McDonald, on oath, says that he has not done, suffered, or been party to any act, matter, or thing specified in the bankrupt act of March, 1867, as for a ground for withholding his discharge, or for invalidating the same if granted.

AUGUSTINE R. McDONALD.

Sworn to before me this 17 day of March, A. D. 1869.
JNO. McLEAN, *Clk.*

60 In the district court of the United States for the southern district of Ohio.

In the matter of Augustine Ralph McDonald, bankrupt. In bankruptcy.

SOUTHERN DISTRICT OF OHIO, *ss:*

Whereas Augustine Ralph McDonald has been duly adjudged a bankrupt, under the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867, and appears to have conformed to all the requirements of law in that behalf, it is therefore ordered by the court that said Augustine Ralph McDonald be forever discharged from all debts and claims which by said act are made provable against his estate, and which existed on the nineteenth day of December, A. D. 1868, on which day the petition for adjudication was filed by him; excepting such debts, if any, as are by said act excepted from the operation of a discharge in bankruptcy.

61 Given under my hand and the seal of the said district court, at Cincinnati, in said district, this 17th day of March, A. D. 1869.

H. H. LEAVITT,
U. S. District Judge.

Attest: [SEAL.] JOHN McLEAN, *Clerk.*

Abstract of proceedings.

District court of the United States for the southern district of Ohio, set.

In the matter of Augustine Ralph McDonald, a bankrupt. In bankruptcy, No. , at Cincinnati, in said district, before Flamen Ball, register.

To JOHN McLEAN, Esq're,
Clerk of said Court:

I hereby certify that the following memoranda of the proceedings had before me in the said case are correctly copied from my docket, to wit:

1869.
March 16. Certificate of exempted property filed by assignee.

" Return of no assets filed by assignee.

62 1869.

March 16th. Application for examination of bankrupt filed by assignee.

" Order made for examination of bankrupt, requiring his appearance on March 16th, 1869, at 2 p. m.

" Examination of bankrupt taken, reduced to writing, & filed.

17th. Certificate for final discharge issued to bankrupt; copy filed.

" Papers handed bankrupt to file in court.

30th. Received & filed claim of Choate & Co., Memphis, $116.26.

F. BALL,
Register.

63 *Order of reference to register.*

In the district court of the United States for the southern district of Ohio.

In the matter of Augustine Ralph McDonald, a petitioner for adjudication in bankruptcy of himself. In bankruptcy.

SOUTHERN DISTRICT OF OHIO, *ss:*

Whereas Augustine Ralph McDonald, of the county of Hamilton, State of Ohio, and district aforesaid, has, on this 19th day of December, A. D. 1868, at 3 o'clock p. m., filed in the office of the clerk of said court a petition for adjudication in bankruptcy against himself, according to the provisions of the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867; it is thereupon ordered the said petition

64 be referred to F. Ball, esqr., one of the registers in bankruptcy of this court, to make adjudication thereon, and take such other proceedings therein as are required by said act; and further, that the said Augustine Ralph McDonald shall, on or before the 30th day of December, at 10 o'clock a. m., file with said register a duplicate copy of said petition and the schedules thereto annexed, and that he attend before said register on said day, and thenceforth as said register may direct, to submit to such orders as may be made by said register or by this court relating to his said bankruptcy.

And further, that, until otherwise ordered by the court, the said register shall act upon the matters arising in this case at his office at Cincinnati, at such times as shall be fixed for that purpose.

Witness the honorable H. H. Leavitt, judge of the said court, and seal thereof, at Cincinnati, in said district, on the 19th day of December, A. D. 1868.

[SEAL.] JOHN McLEAN,
Clerk of District Court for said District.

65 *Adjudication of bankruptcy upon debtor's petition.*

In the district court of the United States for the southern district of Ohio.

In the matter of Augustine Ralph McDonald, by whom a petition for adjudication of bankruptcy was filed on the 19th day of December, A. D. 1869. In bankruptcy.

At a court of bankruptcy, held in said district on the 19th day of

December, A. D. 1868, before F. Ball, one of the registers of said court in bankruptcy.

I, the undersigned, a register of said court in bankruptcy, upon good proof before me this day taken, do find that the said Augustine Ralph McDonald has become a bankrupt within the true intent and meaning of the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867; and I do hereby declare and adjudge him a bankrupt accordingly.

F. BALL,
Register in Bankruptcy.

66 District court of the United States, southern district of Ohio. In bankruptcy.

In the matter of Augustine Ralph McDonald, a bankrupt.

I, Augustine Ralph McDonald, by these presents surrender all my property and effects to the above-named court, as required by the act of Congress approved March 2, 1867. And I also apply to the court for a day to be fixed for the first meeting of my creditors, to be held as provided for by said act.

Dated at Cincinnati this 19th day of Dec'r, 1868.

AUGUSTINE RALPH McDONALD.

67 *Warrant to messenger and return.*

Voluntary bankruptcy.

In the district court of the United States in the southern district of Ohio.

In the matter of Augustine Ralph McDonald, by whom a petition for adjudication in bankruptcy was filed on the 19th day of December, A. D. 1868, in said court. In bankruptcy.

SOUTHERN DISTRICT OF OHIO, *ss:*

To the marshal of the southern district of Ohio, greeting:

Whereas a petition for adjudication of bankruptcy and for relief, under the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867, was, on the 19 day of December, 1868, filed by Augustine Ralph McDonald, of Cincinnati, in said district, upon which he hath been
68 found and adjudged a bankrupt, there being no opposing party thereto: You are, therefore, hereby directed, as messenger, to publish one time in the Cincinnati Daily Commercial (the first publication to be made forthwith) the following notices, to wit:

"This is to give notice that on the 15th day of Jan'ry, A. D. 1869, a warrant in bankruptcy was issued against the estate of Augustine Ralph McDonald, of Cincinnati, in the county of Hamilton, in the State of Ohio, who has been adjudged a bankrupt on his own petition; that the payment of any debts and delivery of any property belonging to such bankrupt, to him or for his use, and the transfer of any property by him, are forbidden by law; that a meeting of the creditors of the said bankrupt, to prove their debts and to choose one or more assignees of his estate,

will be held at a court of bankruptcy to be holden at the office of
69 the register, No. 6 East 3d st., Cincinnati, before Flamen Ball, esq're, register, on the 5th day of February, A. D. 1869, at 10 o'clock a. m."

And you are further directed to serve written or printed notices forthwith by mail or on all creditors upon the schedule filed with said bankrupt's petition, at least ten days before the appointed meeting of said court, in the following form, to wit:

To M'r , of the county of , and State of ,
creditor of bankrupt:

You are hereby notified that a warrant in bankruptcy has been issued out of the district court of the United States for the southern district of Ohio against the estate of , adjudged a bankrupt upon his own petition; that the payment of any debts and the delivery of any property belonging to said bankrupt, to him, or for his use, and the transfer of any property by him, are forbidden by law; that a meeting of
70 the creditors of said bankrupt, whose names are hereto appended, to prove their debts and choose one or more assignees of his estate, will be held at a court of bankruptcy to be holden of the 5th day of February, A. D. 1869, at 10 o'clock a. m., at the office of the register, No. 6 East Third street, Cin., before Flamen Ball, register.

And you have then there this warrant with your doings thereon.

Witness the honorable H. H. Leavitt, judge of the said court, and the seal thereof, at Cincinnati, in said district, on the 19th day of December, A. D. 1868.

JOHN McLEAN,
Clerk of District Court for said District.

Issued by me this 15th day of Jan'y, A. D. 1869.
[SEAL.]
F. BALL,
Register in Bankruptcy.

71 *Return of messenger to accompanying warrant.*

SOUTHERN DISTRICT OF OHIO, *ss:*

At Cincinnati, in said district, on the 20 day January, 1867, by virtue of the within warrant, I have caused the notice therein ordered to be published, by advertisement, one time in the newspapers within mentioned, the first publication of which was on the 19th day of January, A. D. 1869, in the Commercial.

And I also, on the 19th day of January, A. D. 1869, sent by mail or served personally upon the creditors, and all others named in said warrant, a copy of the notice required thereby to be sent to or served on them, and all of the said notices were, according to the directions, set out in said warrant.

Fees.

1. For service of warrant	2 00
2. For necessary travel 6 miles, at 5 cents per mile each way	60
72 For each written note to creditor named in the schedule, 10 c'ts	14 40

4. For actual and necessary expense in publication of notice 2 50
Postage & material..... 7 50
Prepr. notices & adv..... 25 20

51 90

A. HICKENLOOPER, JR.,
U. S. Marshal, as Messenger S. District of O.

SOUTHERN DISTRICT OF OHIO, *ss:*

CINCINNATI, *Jan. 19th, A. D.* 1869.

Then personally appeared the messenger, A. Hickenlooper, jr., and made oath that the above expenses returned by him, in addition to his fees, were actually and necessarily incurred and paid by him and that the same were just and reasonable.

Before me.

J. H. HALLIDAY,
U. S. Com.

73 CINCINNATI, *Jan'ry* 19, 1869.

A. Hickenlooper to M. Halstead & Co., D'r.

Advertising: In bankruptcy. A. R. McDonald..... 2 50

M. HALSTEAD & CO.

Paid.

Certified memorandum of first meeting of creditors.

In the district court of the United States for the southern district of Ohio.

In the matter of Augustine Ralph McDonald, a bankrupt. In bankruptcy.

At the court of bankruptcy, held in said district on the 5th day of February, A. D. 1869, before F. B. Ball, register in bankruptcy.

SOUTHERN DISTRICT OF OHIO, *ss:*

74 MEMORANDUM.—This being the day appointed by the court for the first meeting of creditors under the said bankruptcy, whereof the notice required in that behalf has been duly given, I, the undersigned, register of said court in bankruptcy, sat at the time and place above mentioned, pursuant to such notice, to take the proof of debts, and for the choice of assignee under the said bankruptcy; and I do hereby certify that the greater part in number and in value of the creditors who have proved their debts were present or duly represented, and made no choice of assignee. I therefore appointed, on his giving bond with security in $100, Thomas Jefferson Phelps, of Cincinnati, in the county of Hamilton and State of Ohio, as the assignee of the said bankrupt's estate.

F. BALL,
Register in Bankruptcy.

75 *Notification of appointment of assignee.*

In the district court of the United States for the southern district of Ohio.

In the matter of Augustine Ralph McDonald, a bankrupt. In bankruptcy.

SOUTHERN DISTRICT OF OHIO, *ss:*

To Thomas Jefferson Phelps, of Cincinnati, in the county of Hamilton and State of Ohio:

I do hereby certify to you that you are duly appointed assignee of the estate and effects of the above-named bankrupt, at the first meeting of creditors, on the 5th day of February, A. D. 1869, and I do hereby approve and confirm said appointment; bond with security in $100 required.

Dated at Cincinnati, the 5th day of February, A. D. 1869.

F. BALL,
Register in Bankruptcy.

76 *Acceptance of assignee.*

To whom it may concern:

Be it known that I hereby signify my acceptance of the trust of assignee of the estate of the above-named bankrupt, this 5th day of Febr'y, A. D. 1869.

THOMAS JEFFERSON PHELPS.

Bond of assignee.

In the district court of the United States for the southern district of Ohio.

In the matter of Augustine Ralph McDonald, a bankrupt, in bankruptcy.

SOUTHERN DISTRICT OF OHIO, *ss:*

Know all men by these presents, that we, Thomas Jefferson Phelps, of Cincinnati, Isaac M. Jordan, of Cincinnati, are held and
77 firmly bound unto the United States of America in the just and full sum of one hundred dollars, to the payment whereof, well and truly to be made, we do bind ourselves, our and each of our heirs, executors, and *and* administrators, signed, sealed, and delivered at Cincinnati, this 5th day of February, A. D. 1869.

The said Thomas Jefferson Phelps having been, on the 5th day of February, A. D. 1869, by order of the district court of the United States for the southern district of Ohio, in bankruptcy, appointed assignee of the estate of Augustine Ralph McDonald, a bankrupt, this bond is executed pursuant to the thirteenth section of the act of Congress, entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867; and it is conditioned for the due and faithful discharge of all his duties by the said Thomas
78 Jefferson Phelps as such assignee, and in compliance with the orders and directions of the court in the matter of bankruptcy of the said Augustine Ralph McDonald.

J. M. JORDAN. [SEAL.]
THOMAS JEFFERSON PHELPS. [SEAL.]

Signed, sealed, and delivered in presence of
N. E. JORDAN.
W'M G. WILLIAMS.

Exempted property.

In the district court of the United States for the southern district of Ohio.

In the matter of Augustine Ralph McDonald, a bankrupt. In bankruptcy.

At a court of bankruptcy, held on the 16th day of March, A. D. 1869.

SOUTHERN DISTRICT OF OHIO, *ss:*

79 The following is a schedule of property designated and set apart to be retained by the bankrupt aforesaid as his own property under the provisions of the 14th section of the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867:

General head.	Particular description.	Value.	
		Dolls.	C'ts.
Necessary household and kitchen furniture. Other articles and accessaries. Wearing apparel of bankrupt. Equipments, if any, as a soldier.	.....	100	

Other property as exempted by the laws of the United States.—No other exemptions made, because there are no assets except some old claims, which upon the face called for large amounts, and upon equity I find that they are totally or entirely worthless.

Property exempted by State laws.

T. J. PHELPS, *Assignee.*
F. BALL, *Register.*

80 District court United States, southern district of Ohio.

In the matter of Augustine Ralph McDonald, bankrupt.

And now comes T. Jefferson Phelps, assignee of said bankrupt, and makes application to the court for an order requiring the said Augustine Ralph McDonald to appear before the Hon. Flamen Ball, register in bankruptcy, and submit himself to an examination concerning all matters relating to his bankruptcy in the manner required by law.

T. J. PHELPS,
Assignee.

81 District court United States, southern district of Ohio.

In the matter of Augustine Ralph McDonald, a bankrupt.

On application of Thomas J. Phelps, assignee of said bankrupt, for

an order requiring the said Augustine Ralph McDonald to appear and be examined upon all matters relating to his bankruptcy, as provided by section 26 of the "Act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867, it is ordered that the said Augustine Ralph McDonald be cited to appear before Flamen Ball, esq're, one of the registers of this court, at his office No. 6 East Third street, Cincinnati, on the 16th day of March, 1869, at 2 p. m., then and there to submit to said examination on the part of said assignee in the manner prescribed by law.

F. BALL, *Register.*

82 District court U. S., southern district of Ohio.

In the matter of Augustine McDonald, a bankrupt.

And now comes Thomas Jefferson Phelps, assignee of said bankrupt, and makes oath and says that he, this deponent, as assignee of the estate and effects of said bankrupt, has neither received nor paid any money on account of said estate.

T. J. PHELPS,
Assignee.

Subscribed and sworn to before me this 16 day of March, 1869.

AUBREY WINSLOW,
U. S. Commissioner.

83 *Petition of bankrupt for discharge.*

In the matter of Augustine Ralph McDonald, a bankrupt. In bankruptcy.

SOUTHERN DISTRICT OF OHIO, *ss:*

To the Hon. H. H. LEAVITT,
Judge of the District Court of the United States for the Southern District of Ohio:

Augustine Ralph McDonald, of Cincinnati, in the county of Hamilton and State of Ohio, in said district, respectfully represents that on the 19th day of December, 1868, he was duly declared a bankrupt under the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867; that he has duly surrendered all his property and rights of property and fully complied with and obeyed all the orders and directions of the
84 court touching his bankruptcy, and is ready to submit himself to any other and further examinations, orders, and directions which the court may require; and that no debts have been proven against him as such bankrupt.

Wherefore he prays that he may be decreed by the court to have a full discharge from all his debts provable under said bankrupt act, and a certificate thereof granted according to the act of Congress aforesaid.

Dated this 18th day of February, A. D. 1869.

AUGUSTINE RALPH McDONALD,
Petitioner.

Oath of petitioner.

UNITED STATES OF AMERICA,
Southern District of Ohio, ss:

I, Augustine Ralph McDonald, the petitioner above named, do hereby make solemn oath that the statements contained in the fore-
85 going petition, subscribed by me, are true so far as the same are stated of my own knowledge, and that those matters which are stated therein on information and belief are true according to the best of my knowledge, information and belief.

AUGUSTINE RALPH McDONALD,
Petitioner.

Subscribed and sworn to before me this 18th day of February, A. D. 1869.

F. BALL, *Register.*

District court of the United States, southern district of Ohio. In bankruptcy.

In the matter of Augustine Ralph McDonald, bankrupt.

Upon this 22 day of February, 1869, on reading the petition of the said bankrupt for a final discharge, it is ordered by the court that a hearing be had upon the same on the 16th day of March, 1869,
86 before Flamen Ball, esq., one of the registers of this court, at his office No. 6 East Third st., Cincinnati, at 10 o'clock a. m., and that notice thereof be published in the "Cincinnati Daily Commercial," "Cincinnati Evening Chronicle," once a week for three weeks, and that all creditors who have proved their debts, and other persons in interest, may appear at said time and place, and show cause if any they have why the prayer of the said petition should not be granted.

And said creditors are further notified that the second and third meetings of creditors of said bankrupt will be held at the same time and place for the purposes provided by section 27 and 28 of the bankrupt law.

And it is further ordered by the court, that all creditors who have proved their debts and whose places of residence are known shall be entitled to notice of the filing of said petition and order, by let-
87 ter addressed to them respectively, at their known usual place of residence, attested by the clerk of this court, and sent them by mail by said clerk, of which due proof shall be given by said clerk.

F. BALL,
Register in Bankruptcy, Southern District of Ohio.

District court, southern district of Ohio.

In the matter of the application of A. R. McDonald, before Flamen Ball, register.

T. B. Micon, by his attorneys, now come and appear for the sole purpose of moving, which he now does, to dismiss the petition of said A. R. McDonald, on the ground that he has not been a resident of said
88 district or of the county of Hamilton for six months prior to his application, but is and has been for all that time and more a resident of Memphis, Tennessee.

Wherefore they move a dismissal because this court has no jurisdic-

tion of said cause. for which purpose alone they now appear and move time be granted to prove the same.

Feb'y 5, '69.

LINCOLN, SMITH & WARNOCK,
Att'ys for said Petitioner.

District court of the United States, southern district of Ohio. In bankruptcy.

In the matter of Augustine Ralph McDonald, bankrupt.

To the clerk:

I, Flamen Ball, the register to whom this cause stands referred, do hereby certify that no creditors have proved their claims against the estate of said bankrupt.

F. BALL, *Register.*

89 In the matter of Augustine Ralph McDonald, a bankrupt. 930.

1868.

Dec'r 19. Rec'd copy peti. & schedules.
" " surrender of bankrupt & application for first meeting of creditors.
" " order of ref. & blank warrant of clerk.
" Decree of adjudication rendered, filed, & copy sent clerk.

1869.

January 15. Warrant issued to messenger; first meeting cred't'rs fixed for Feb'y 5th, 1869, at 10 a. m.
" Certificate of protection issued to bankrupt.
Feb'y 5. Warrant returned by messenger duly served.
" First meeting creditors held; no choice of assignee. Court approves of Thomas Jefferson Phelps for assignee, on his giving bond with security in $100.
" Notification of his appointment & blank bond sent assignee.
" Certified mem. of first meet. creditors filed; copy sent clerk.
" Acceptance of assignee filed and approved.
12. Deed of assignment made and del'd to assignee; copy furnished clerk.
" Order of publication issued to assignee.
90 Feb'y 18. Petition for final discharge filed and submitted to Hon. H. H. Leavitt for order thereon.
22. Rec'd order from judge to hold final meetings of creditors on March 16, 1869, at 10 a. m.
" Order made to that effect and filed.
" Notices sent "Commercial" & "Chronicle."
24. Certificate to clerk of no claims proved; copy filed.
March 5. 3 absts. of entries furnished clerk.
16. Certificate of exempted property filed by assignee.
" Return of no assets filed by assignee.
" Application for examination of bankrupt filed by assignee.
" Order made for examination of bankrupt, requiring his appearance on March 16, 1869, at 2 p. m.
" Examination of bankrupt taken, reduced to writing, & filed.

17. Rec'd of bankrupt bal. of register's costs, $10, and $12 printer's fees.
" Certificate for final discharge issued to bankrupt; copy filed.
" Papers handed to bankrupt to file in court.
27. Application filed by assignee for the sale of certain accounts.
91 March 27. Order made for said sale, & copy furnished assignee.
30. Rec'd and filed claim of Choate & Co., Memphis, $116 26/100
" One abstract of entries furnished clerk.
Sept. 13. Application by assignee for order for sale of certain accounts.
27. Report of sale of accounts filed by assignee.
1873.
July 9. Bal. of papers filed in court on or about this date.

SOUTHERN DISTRICT OF OHIO, *ss:*

I, Flamen Ball, register in bankruptcy, do hereby certify that the above entries in the matter of Augustine Ralph McDonald, a bankrupt, are the same as they appear on said docket.

Cincinnati, July 29, 1873.

FLAMEN BALL,
Register in Bankruptcy.

92 UNITED STATES OF AMERICA,
Southern District of Ohio:

I, Thomas Ambrose, clerk of the district court of the United States for said district, do hereby certify the foregoing to be a true and correct copy of the record and proceedings in the matter of the bankruptcy of Augustine Ralph McDonald, as the same are kept in this office.

In witness whereof I have hereunto set my hand and affixed the seal of said court at Cincinnati, this 15th day of July, A. D. 1874, and in the 99th year of the Independence of the United States of America.

Attest.
[SEAL.]

THO'S AMBROSE,
Clerk U. S. Dist. C't S. D. Ohio.

93 *Exhibit No. 2.—Filed Oct. 2, 1874.*

Memorial of A. R. McDonald. Mixed Commission on British and American claims. No. 42.

Memorial of Augustine Ralph McDonald.

To the honorable the commissioners appointed under the twelfth article of the treaty between the United States and Great Britain concluded at Washington May the eight', anno Domini eighteen hundred and seventy-one.

Your memorialist, Augustine Ralph McDonald, respectfully represents that he was born in the city of Charlottetown, in island of Prince Edward, one of the British North American Provinces, and a part of the Kingdom of Great Britain, on the sixth day of April, A. D. eighteen hundred and twenty seven, and that he is now a resident of Louis-
94 ville, in the State of Kentucky, and in the United States of America, and has never taken any steps whatsoever towards be-

ing naturalized in any country other than that of his birth; that the place of your memorialist's residence was Montreal, in Canada East, between the thirteenth day of April, A. D. eighteen hundred and sixty-one, and the ninth day of April, A. D. eighteen hundred and sixty-five, inclusive.

Your memorialist begs to represent further, that having received the promise of protection and the necessary permits from the office, Treasury Department of the United States, he made the necessary pecuniary arrangement for purchasing a large amount of cotton in the Southern States, and proceeded to Shreveport, in the State of Louisiana, where he secured permission to purchase cotton as a British sub-
95 ject and have the same exempted from burning by the Confederate authorities, from one A. Broadwell, then chief of the cotton bureau of the Confederate States army, in the department west of the Mississippi River. That immediately following this he purchased about five thousand bales of cotton, averaging five hundred pounds to the bale, more or less, making two millions five hundred thousand pounds of cotton, in the counties of Chicot, Ashley, and Drew, in the State of Arkansas, and in the parishes of Morehouse and Washita, in the State of Louisiana, in the vicinities of the bayous Mason and Bartholomew; that the said purchases were made in the months of May and June, A. D. eighteen hundred and sixty-four, by your memorialist in person, and by his agents acting for him; and the said cotton was delivered to your memorialist and made subject to his order.

96 Your memorialist begs to represent further, that after the purchase of the said cotton and before the same could be removed to market, the Congress of the United States passed laws restricting traffic in cotton coming from within the Confederate lines, and the United States Treasury Department made stringent rules and regulations in reference thereto, in consequence of which your memorialist was unable to move his said cotton, and was compelled to proceed to Washington in order to obtain relief; that after great delay he finally left Washington for Arkansas and Louisiana under a promise that a special regulation of the Treasury Department should be made to enable him to move his said cotton; that a regulation was subsequently made, but too late to afford your memorialist relief, for in January, A. D. eighteen hundred and sixty-five, to the best of your memorialist's recollection between
97 the twentieth and twenty-fifth days of said month, a large portion of the said cotton was burned, to the best of your memorialist's information and belief three thousand bales, more or less, making one million five hundred thousand pounds of cotton, by a large force of United States troops under command of General Osborne, who left Memphis with his said force a short time previous to the date last above stated, and disembarking at Gaines' Landing in Arkansas, proceeded to Munroe, in Louisiana, along the bayous Mason and Bartholomew, with his said command, and by his direction all large amounts of cotton were burned, as your memorialist is informed and believes; that your memorialist never succeeded in recovering any part of the said cotton afterwards, not even so much as a single bale, and that he has never received any compensation whatsoever for the said cotton, nor for
98 any part thereof; that at the time the said cotton was burned it was worth ninety cents per pound in the market, and the reasonable expense of delivering the same in market, including freights, United States taxes, and all other costs and charges, would have been about ten cents per pound, so that his said cotton was reasonably worth at the time of its destruction eighty cents per pound.

Your memorialist begs to represent that the loss of his said property involved him in great financial embarrassments, and finally rendered him insolvent, destroying his future prosperity and his peace of mind, to his damage in the sum of $100,000.

Your memorialist therefore begs to submit the following:

The United States in account with Augustine Ralph McDonald, Dr.

To 1,500,000 lbs. cotton, at 80 cts. per lb	$1,200,000
To damages	100,000
Total	$1,300,000

99 Your memorialist begs to represent further, that in all the transactions involved in purchasing the cotton herein charged, he conducted himself in a manner frank and honorable with the United States, representing fully and unreservedly all his purposes and intentions to the authorities thereof on all occasions, and receiving therefrom such encouragements as led him to undertake and carry out his purpose to buy cotton largely, and that to the best of his belief he so demeaned himself as not to incur censure or blame from the said government, or any of its representatives, and that no person other than your memorialist has any interest in this claim whatsoever.

Your memorialist begs to represent further, that he hereby appoints Gilbert Meyers, of Memphis, Tennessee, as his true and lawful attorney, for him and in his stead, to prosecute this claim to final issue be-
100 fore the commission appointed under the treaty of Washington, of May the 8th, A. D. 1871, or before any court, department, or bureau of Great Britain, with full power of substitution, hereby ratifying and confirming all that said attorney shall lawfully do in virtue hereof, and hereby annulling and revoking all other powers of attorney in the premises.

AUGUSTINE RALPH McDONALD.

Attest:

HENRY F. DIX.
JAMES O. PIERCE.

Augustine Ralph McDonald being duly sworn deposes and says that he is the memorialist named in the foregoing memorial, and who signed the same, that matters therein stated are true of his own knowledge, except as to those matters stated on information and belief, and as to those matters he believes them to be true.

AUGUSTINE RALPH McDONALD.

101 UNITED STATES OF AMERICA,
District of West Tennessee, ss:

Before me, the undersigned United States commissioner for said district, at office at Memphis, Tennessee, personally appeared Augustine Ralph McDonald, the memorialist above stated, with whom I am personally acquainted, and subscribed the foregoing memorial and affidavit in my presence, and was sworn by me to the truth thereof as stated in the said affidavit.

Witness my hand and seal at Memphis aforesaid, this 25th day of November, A. D. 1871.

[SEAL.]

JAMES O. PIERCE,
U. S. Com'r, District West Tennessee.

102 *Exhibit No. 3.—Filed Oct. 2, 1874.*

Before the mixed commission on British and American claims.

AUGUSTINE R. McDONALD
vs.
THE UNITED STATES. } Nos. 42 and 334.

BRIEF FOR CLAIM.

Statement of the case.

Augustine R. McDonald seeks by this action to obtain compensation for certain lots of cotton, which he was induced by the laws and officers of the United States to buy, and which officers of the said United States burned.

By act of July 13, 1861, Congress empowered the President in certain contingencies to declare the inhabitants of States or parts of States in insurrection, and then provided, "That the President may, in his discretion, license and permit commercial intercourse with any such
103 part of said State or section, the inhabitants of which are so declared in a state of insurrection, in such articles, and for such time, and by such persons, as he in his discretion may think most conducive to the public interest; and such intercourse, so far as by him licensed, shall be conducted and carried on only in pursuance of rules and regulations prescribed by the Secretary of the Treasury." (S'ct. 5, act of July 13, 1861, U. S. Stat., vol. 12, p. 255.)

Pursuant to this statute the President, on the 16th day of August, 1861, declared among others the States of Arkansas and Louisiana (excepting such part of said States as may maintain a loyal adhesion to the Union and the Constitution or may be from time to time occupied and controlled by forces of the United States) to be in a state of insurrection. (Statutes at Large, vol. 12, p. 1262.)

104 Also, in pursuance of this statute, on the 28th of February, 1862, the President licensed and permitted commercial intercourse between the inhabitants of those parts of the United States heretofore declared to be in insurrection and the cities of the loyal States, "in all cases within the rules and regulations which had been or may be prescribed by the Secretary of the Treasury." (Statutes at Large, vol. 12, p. 1266.)

On the 4th of March, 1862, the Secretary of the Treasury issued his rules and regulations in regard to permits to trade. (Rules and Regulations Concerning Commercial Intercourse, p. 40.)

On the 29 day of March, 1861, the Secretary of the Treasury liberalized these rules, because, as he declares, "it is desirable to remove as far as may be properly done the restrictions upon commercial intercourse," *ect.* (Ibid., p. 42.)

105 On the 28th day of August, 1862, more detailed rules and regulations were published, and the Secretary of War, and of the Navy, called attention to these rules, and ordered that the Army and Navy should render such aid as might be necessary in copying out these regulations, and that "there will be no interference with trade or shipments of cotton." (Ibid., pp. 46–7.)

On the twenty-first day of March, 1863, these rules and regulations were promulgated by the Secretary of the Treasury, with license and permit of the President, still more elaborate, but permitting trade in

cotton under permits from the Secretary of the Treasury and his subordinates. (Ibid., pp. 47 to 57.)

On the third day of July, 1863, the Secretary of the Treasury (the late Chief Justice of the United States) issued a circular letter to
106 his agents explaining the rules and regulations, in which he declared their purpose to be:

"1st. To allow within districts in insurrectionary States where the authority of the government is so completely re-established in your judgment, sanctioned by that of the commanding general, as to warrant it, and between such districts and loyal States, the freest commercial intercourse compatible with the prevention of supplies to persons within rebel lines.

"2nd. To allow beyond such districts, but within the lines of our military occupation, such intercourse, sanctioned by the commanding general, as may be required to supply the inhabitants with necessaries, but to allow no intercourse until the complete re-establishment of the national authority shall warrant; and

"3d. To allow no intercourse at all beyond the national and
107 within the rebel lines of military occupation. Across these lines there can be no intercourse except that of a character exclusively military.

"The limits of the districts with which the most general trade may be allowed must necessarily be prescribed by you, after full conference with the commanding generals of departments, whenever such conference is practicable; and these should be so clearly and distinctly marked by known geographical boundaries, or by the enumeration of counties, as to leave no uncertainty as to their course or comprehension.

"There does not seem to me to be much danger in intercourse which does not involve the furnishing of supplies. If, for example, any person desires to bring cotton, tobacco, sugar, turpentine, or other property, already purchased, or to be purchased, for money only, from any
108 place within the lines of our military occupation, I can see no objection to his being permitted to do so, subject to the fees and obligations specified in the general regulations," *ect., ect.* (Ibid., pp. 60–1.)

It is plain from the law, the rules and regulations, and the explanation of their purpose, that it was the policy of the United States to encourage the getting out of cotton from enemy's territory, and that individuals were encouraged to embark their fortunes in this business.

Other regulations followed these already referred to, and on the 11th day of September, 1863, revised regulations were offered by the President and promulgated.

Under this series of rules and regulations, sections XX, XXI, and XXII (Ibid., pp. 70–1), claimant was licensed and permitted to pur-
109 chase and bring to market cotton, and the President of the United States gave him an autograph letter, addressed to the officers of the Army and Navy of said States, directing them to aid and assist said claimant, as opportunity offered, in getting out such cotton as he might purchase.

Thus invited by a law of Congress, and encouraged by the President of the United States, claimant invested a large fortune in the purchase of cotton under said permits in insurrectionary districts, within the lines of Federal occupation as established by the proper officers, fiscal and military.

These purchases were made during the months of May and June, 1864. On the 2d day of July, 1864, Congress passed another law, by which the purchase of products of insurrectionary States was taken away from

individuals and transferred to the government. (Statute at Large, vol. 1, sect. 8; vol. 13, p. 375, proclimation July 1, 1862; U. S. Statutes, vol. 12, p. 1266.)

110 This latter statute annulled all permits given under the former; it did not affect purchases already made, and modified regulations were issued providing for bringing in cottons so purchased.

During the last of January or the first of February, 1865, General E. D. Osborne, an officer of the United States Army, with a force of several thousand cavalrymen, marched through the district of country where claimant's purchases had been made, and where his cottons were stored, and burned them all.

This district of country when this occurred was wholly unoccupied by any regular rebel force, and no armed bands of men, large or small, opposed General Osband on his march, and "not a single hostile gun was fired."

The evidence in chief discloses the material facts in the case, and to that attention is now invited.

111 *Affidavit of J. Sumner.—Filed Sep.* 8, 1874.

In the supreme court of the District of Columbia.

T. J. PHELPS, ASSIGNEE, *vs.* A. R. MCDONALD. } Equity. No. 3910.

John Sumner, being duly sworn, deposes and says:

I am acquainted with Augustine R. McDonald, the defendant in this case. I have seen and talked with him within the past ten weeks. In that conversation he claimed the award in the case as his own, and said he would draw all the money himself, either here or in England, and he would pay it out only according to his own good conscience. We were then talking about debts incurred by him within the past three years; and as to them, he said he would pay out of the award such parts

112 of them as he deemed proper and just claims against him.

JOHN SUMNER, JR.

Sworn and subscribed before me this 31st day of August, 1874.

JOS. T. K. PLANT, *J. P.*

113 *Amended bill.*

On the 2d day of October, 1874, an amended bill was filed, alleging that the defendant, McDonald, had assigned the award to William White, of Cincinnati, Ohio, with certain allegations in relation thereto, and praying that he, the said William White, be made a defendant, and that the complainant have the same relief against him as prayed against the said McDonald.

This amended bill is missing from the files, and in lieu thereof the following amendment is filed, by consent of parties:

THOMAS J. PHELPS *vs.* AUGUSTINE R. MCDONALD ET AL. } 3910. Equity docket 14.

And now come the complainant, and by leave of the court amends his bill, and says:

113½ That since the making of the said award, the said defendant, Augustine R. McDonald, has assigned the same to one William White, of Cincinnati, Ohio, and they say that the said White took the said assignment with full notice that the said McDonald had no valid title thereto, for, as the complainant is informed and believes, and so charges, the said White, at the sale of assets in the bill mentioned, purchased the same at the request of the said McDonald, for him, and with money furnished by him.

PRAYER.—That White be made a party; that process issue; that he be sworn, and that the complainant have the same relief as prayed against McDonald. Verified by Jno. D. McPherson.

I believe the foregoing to be the substance and nearly the words of the amendment.

JNO. D. McPHERSON,
CHA'S A. RAY,
Solicitor for McDonald & White.

114 *Subpœna.*

In the supreme court of the District of Columbia, October 2, 1874.

THOMAS J. PHELPS, COMPLAINANT, *against* AUGUSTINE R. McDONALD ET AL., DEFENDANT. } No. 3910. Equity docket 14.

The President of the United States to William White, defendant:

You are hereby commanded to appear in this court at its first special term, occurring twenty days after service of this subpœna, and answer the exigency of the amended bill, under pain of attachment and such other process of contempt as the court shall award.

Witness D. K. Cartter, chief justice.

[SEAL.] R. J. MEIGS, *Clerk, &c.*,
By L. P. WILLIAMS, *Ass't Clerk.*

Marshal's return.

Sum'd & served notice for inj't on defendant.
Octo. 2d, '74.

A. SHARP, *Marshal.*

115 *Restraining order.*

An amended bill praying an injunction to restrain defendant, William White, from assigning, transferring, releasing or incumbering or in any way disposing of the claim No. 42, awarded by the Mixed Commission on British and American claims mentioned in said bill, is this day filed.

Hearing is fixed for Tuesday, October 6, 1874, at 11 o'clock a. m.

Until further order you are hereby restrained as prayed.

By order of the court.

D. C. HUMPHREYS,
Justice, &c.

Attest:

R. J. MEIGS, *Clerk, &c.*,
By L. P. WILLIAMS,
Ass't Clerk, &c.

116 *Order to issue injunction.—Filed Oct.* 6, 1874.

In the supreme court of the District of Columbia.

THO. J. PHELPS, ASSIGNEE,
vs.
AUGUSTINE R. McDONALD AND WILLIAM White. } In equity. No. 3910.

On motion of the solicitor for the complainant, it is this sixth day of October, 1874, ordered that the writ of injunction issue as prayed to restrain the defendant William White until the further order of this court.

D. C. HUMPHREYS, *Justice.*

Decree pro confesso.—Filed Dec. 7, 1874.

In the supreme court of the District of Columbia.

THOMAS J. PHELPS, ASSIGNEE,
vs.
AUGUSTINE R. McDONALD AND WILLIAM White. } No. 3910. Equity doc. 14.

117 The defendants in this cause having entered their appearance on the 30 day of October, A. D. 1874, and not having answered, it is this 7th day of December, A. D. 1874, on motion of Jno. D. McPherson, esq., solicitor for complainant, ordered, adjudged, and decreed that the bill in this cause be taken for confessed.

By the court.

A. W.

Motion to strike out & vacate decree pro confesso.—Filed Dec. 21, 1874.

In the supreme court of the District of Columbia.

THOMAS PHELPS, ASSIGNEE, PLAINTIFF,
vs.
AUGUSTINE R. McDONALD AND WILLIAM White, defendants. } No. 3910. Equity doc. 14.

Robert Christy, solicitor for said defendants, comes now and moves the court to strike out an annul the decree pro confesso hereto-
118 fore entered herein; and likewise moves for leave to enter the appearance of said defendants, and to file their answer and pleas herein.

That said motions are founded upon the following grounds, to wit:

1. Said answer and pleas are now prepared, and ready to be filed when it pleases this honorable court so to permit.

2. Said pleas and answers have been prepared with all reasonable diligence, and are but now completed and ready to be filed.

3. The entry of the appearance of said defendants by the clerk of this court happened in this wise: The said Robert Christy noted his appearance as counsel for said defendants, which was construed into an entry of the appearance of said defendants herein; but on the 1st Tuesday of December the said Robert Christy called at the office of said clerk to

enter the appearance of said defendants herein, when he learned
119 that the first entry had been so construed as aforesaid. That the said Robert Christy did not intend to enter the appearance, but, as a matter of convenience, to note his employment as counsel of said defendants prior to said 1st Tuesday of December, well knowing that it was not possible for the said defendants to plead or answer by said rule day next happening after his entry or appearance as counsel.

ROBERT CHRISTY,
Sol. for Defendants.

Order vacating pro confesso.—Filed Dec. 21, 1874.

1874, DEC. 21.

On motion of R. Christy, for def't, let pro confesso be vacated and answer of defendants be filed.

By the court.

A. W.

120 *Answer of defendants.—Filed Dec.* 21, 1874.

In the supreme court of the District of Columbia, the day of December, 1874.

THOMAS JEFFERSON PHELPS, PLAINTIFF,
vs.
AUGUSTINE R. MCDONALD AND WILLIAM WHITE, defendants. } No. 3910. Equity doc. 14.

The answer of the above named defendants, Augustine R. McDonald and William White, to the bill of complaint, and the amendment thereto, of the above-named plaintiff.

In answer to the said bill of complaint and the amendment thereto, we say as follows:

1. We admit that the said complainant is a resident of the State of Kentucky, but deny his right to bring this action as such assignee in bankruptcy, because—

1. The said assignee had actual notice of the pendency of the said
121 claim of the said A. R. McDonald before said Mixed Commission; was present as a voluntary witness during the prosecution of said claim, and testified, amongst other things, "after making diligent efforts to realize from the assets of said bankrupt, I applied to Flamen Ball, register in bankruptcy, for an order allowing me to sell all accounts, notes, and judgments belonging to the estate of said bankrupt. The order was made in conformity with my application, and, after due publication, said accounts, notes, and judgments were sold at No. 30 West Fourth street, at the office of Messrs Jordan & Jordan, Cincinnati, Ohio, in conformity with said order.

The sale was duly advertised in the Cincinnati Commercial as required and ordered by the register in bankruptcy, and in conformity with the order of the same. All steps taken by me were in strict
122 conformity with the law and orders governing proceedings in bankruptcy, and in conformity with the order marked Exhibit C, being the order referred to in said bill of complaint, to wit, in the exhibit setting forth the proceedings in said matter of bankruptcy. And yet the said plaintiff did not at any time after the said sale of said claim

up until the filing of said bill of complaint make any demand of either of these defendants in respect to said claim, nor assert any interest whatever in said claim.

2d. Section 2 of an act of Congress of the United States entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2d, 1867, provides that "no suit at law or in equity shall in any case be maintainable by or against such assignee or by or against any person claiming an adverse interest touching
123 the property and the rights of property aforesaid in any court whatever, unless the same shall be brought within two years from the time such cause of action accrued for or against such assignee." The said record of proceedings in bankruptcy attached to said bill of complaint shows that said cause of action accrued on the 27th day of September, A. D. 1869, and that more than two years have elapsed before the beginning of this suit. And these defendants insist upon said statute as a complete bar to the claim of the said complainant herein and to every part thereof, and hereby pleads and rely upon the same.

3. The treaty with Great Britain made on the 8th day of May, A. D. 1871, referred to in said bill of complaint, provides in Article XIII of said treaty "the high contracting parties hereby engage to con-
124 sider the decision of the commissioners as absolutely final and conclusive upon each claim decided upon by them, and to give full effect to such decisions without any objection, evasion, or delay whatsoever." And these defendants say that the claim or award in controversy herein is covered and protected by said provision from the suit of said complainant, and they insist and plead and rely upon the same as a complete bar to plaintiff's action.

2. And these defendants, insisting upon their said pleas and in no wise waiving or departing from the same or the benefit thereof, but saving to themselves the benefit of the said pleas, and also saving and reserving to themselves all and all manner of advantage and benefit of exception to the many insufficiencies, errors, and imperfections of the complainant's said bill of complaint, for answer thereunto, or to so
125 much thereof as they are advised concerns them to make answer unto, they, these defendants, answer and say: We admit that the said defendant McDonald was at one time a resident of the southern district of Ohio, and aver that he is now and was at the time of the filing of the said original bill of complaint a resident of the city of Louisville, in the State of Kentucky.

We admit that the fund referred to in said bill of complaint is in the District of Columbia, but insist that it is true that at the time of filing said bill of complaint and ever since hitherto it has been without the jurisdiction of this court, and not subject to the orders or authorities thereof. That it is now in the custody of Her Britannic Majesty, to wit, in the hands of her duly authorized and empowered agent. De-
126 fendants deny that it was necessary to bring this suit in this District in order to obtain jurisdiction over the said defendants, or either of them, the powers of the district court of the United States for the southern district of Ohio being sufficient and ample in the premises.

3. We admit all of the averments contained in the paragraph marked "3," in the said original bill of complaint.

4. We admit all of the averments contained in the paragraph marked "4," in the said original bill of complaint, excepting as to the amount of said award, which will be reduced 5 per centum to meet the costs and expenses of said Mixed Commission.

5. We admit all of the averments contained in said paragraph marked "5," in said original bill of complaint, with this modification, however, that the said defendant McDonald was not entitled to recover any
127 damages for his cotton unless the same was burned within the military lines of the loyal army of the United States, as held by said commission.

6. We admit all of the averments contained in the paragraph marked "6," in said original bill of complaint.

7. We admit all of the averments contained in the paragraph marked "7," in said original bill of complaint, with the following additional averment, however, that the said register in bankruptcy found and decreed that the said assignee had made diligent efforts to collect said accounts, notes, judgments, &c., that he had been unable to collect the same, and that the same are of no considerable value; which order and decree embraced and applied to the claim in controversy in this suit. And these defendants insist that said claim, and all and
128 every interest therein, of every nature whatever, was invested in the said defendant McDonald, and was wholly inseparable from him as a British subject, and remained in him from the time of the burning of the *the* said cotton as aforesaid until said award was finally pronounced by said Mixed Commission; and that neither said award nor any interest therein passed by said adjudication of bankruptcy, nor by operation of law in any way, nor by the making of said schedules, nor by the presentation and filing of them with said register, nor by any act of the said defendant McDonald in the premises. And these defendants further insist that said sale by said assignee was made in good faith, and under an order lawfully made in the premises, without the influence of said defendant McDonald, or of said defendant White; and that the said claim was purchased by said defendant White at
129 said sale fairly and honestly; and that if said assignee had acquired any interest whatever he lawfully parted with the same by sale to said defendant White, who subsequently assigned and transferred his interest therein, if any there was that could pass by said sale, to the said defendant McDonald, who has ever since hitherto retained such interest until after the rendition of said award. And that, for the reasons aforesaid, the said complainant at the time of filing said bill of complaint had no interest whatever either in said award or in said claim.

8. These defendants insist that said commission, on full consideration of the subject, found and held that the said defendant McDonald was the sole and exclusive owner of said award, and that the said complainant had no interest whatever therein.

130 That said claim was earnestly and closely contested by the Government of the United States throughout, and testimony taken therein covering about six thousand pages of printed report of said commission; and that the record of the proceedings in said matter of bankruptcy of said defendant McDonald was presented to said commission, and by them duly considered; and that all of the questions of fact presented by said complainant in said paragraph 8 were fully considered and passed upon by said commission before making said award, and in favor of the interest of McDonald therein, and against the claim of the United States that said claim was in said assignee. And yet these defendants, in answer to said averments in said paragraph 8, say that they deny that it is true that the said defendant McDonald,
131 in his said schedule, gave no sufficient description of said claim, but, on the contrary, insist that said description was as full and

complete as was possible under the circumstances existing at the time the said schedule was made, because at that time the liability of the Government of the United States to said defendant McDonald, upon said claim, had not by law been fixed or ascertained; nor had any treaty concerning claims of this nature been made; nor was it known or even suspected that any such treaty could or would be made between Great Britain and the Government of the United States, and the said defendant McDonald could only describe said claim by stating the article burned, the quantity, the section of the country in which it was burned, and the name of the officer commanding the troops of the loyal army of the United States which did the burning; all of which he did.

132 That said defendant McDonald was not within one hundred miles of either of the places at which said burning took place at the time or times of such burning, and could not describe with circumstances of great particularity said burnings.

That he could not state the value of said claims because no legal liability was then known to attach to any person whomsoever in favor of said defendant McDonald; and the cotton itself had been wholly destroyed, and had no value whatever but was worthless, and thereupon said defendant McDonald properly described said claim as worthless, and that in fact said defendant McDonald was under no legal obligation whatever either to include or describe said claim in said schedule, the same not being a chaos in action, and not falling under either of the classifications prescribed by law of matters and things to be

133 included in the schedules required to be furnished by a bankrupt.

That said defendant McDonald did not purposely or from any fraudulent motive whatever make or attempt to make said description of said claim incomplete, inaccurate, or indefinite. That neither said register, nor said assignee, nor the counsel of said McDonald, nor the said defendant McDonald, nor any of his creditors at the time of making said schedule, nor at any time thereafter until the making of said treaty, deemed said claim of any value whatever, which statement is evidenced by the fact said register held and said assignee so treated said claim, and said creditors were so well satisfied in regard thereto that they refused and neglected to prove their claims until shortly before the filing of said bill of complaint they were instigated thereto by

134 divers enemies of the said defendant McDonald, who are likewise now pressing suits in this court and others, unjust and unfounded claims.

But these defendants expressly state that they do not know and cannot set forth whether any creditor of the said defendant McDonald, excepting the one hereinbefore referred to, has proven any claim for any amount whatever against said defendant McDonald.

And defendants likewise insist that all claims of all creditors whatsoever mentioned in his said schedule in bankruptcy have long since been barred by the statute of limitations, and that the said register should have rejected them as just claims against the estate of said defendant McDonald. That by fair and reasonable implication all parties originally connected with said proceedings in bankruptcy deemed and

135 treated said claim as worthless, because said register only required and held the said assignee to execute to and deliver a bond in a nominal sum, to wit, $100.00, and has not since hitherto required him to give any additional amount.

That said claim was of no value whatever to said assignee nor to any other person whatsoever, and that the same would not have been re-

ceived nor considered if presented by any other person than the said Augustine R. McDonald, but would have remained worthless.

That said claim would not have been of any value whatever to the said Augustine R. McDonald unless he had gone to great trouble and expense in presenting and sustaining the same. That said award was only obtained after years of patient searching for witnesses, great personal exertions and sacrifices, the taking of thousands of pages
136 of testimony, and the employment of counsel. To all of which said assignee wholly neglected in any way to contribute, nor did either of said creditors. Defendants deny that it is true that the said defendant McDonald in the said description of said claim for the burning of his cotton did not state particulars which were essential to give it any validity whatever. But defendants insist, as hereinbefore stated, that no law of the United States nor treaty with the Government of Great Britain gave to the said defendant McDonald any right of action whatever concerning said claim, he being a British subject. That for said reason he could not sue on said claim in any court of the United States nor prosecute the same before any tribunal whatever, including the departments of the United States and the Congress thereof.

Defendants insist that it is not true that neither the United
137 States nor their officers were liable for the destruction of cotton found in the enemy's country to whomsoever belonging, if the said complainant meant to imply thereby that the cotton included in said award was of that description, for the said defendant McDonald only recovered damages before said commission for so much of said cotton as he was able to prove to the satisfaction of said commission was burned within the military lines of the Federal Army.

These defendants likewise insist that at the time the said defendant described said claim he could not anticipate the making of said treaty, nor the rules of said commission, and include them in said description.

9. These defendants deny, as untrue, all the charges of fraud by
138 implication and in'uendo contained in paragraph numbered 9 in said bill of complaint, and insist that the said defendant McDonald in making said schedule and in describing said various items of claims acted fairly and honestly, and with no intent to deceive said court, nor said assignee, nor any creditor, nor any person whomsoever that should attend the sale of the same. That said defendant McDonald surely described all the other claims correctly, because said record in bankruptcy shows that neither of them proved to be of any value whatever, and that nothing was realized thereon by said assignee.

10. These defendants say as to so many of the averments in paragraph 10 in said bill of complaint as are not herein specifically alluded to, that they do not know and cannot set forth whether said aver-
139 ments are true or not, but insist that said defendant McDonald did not know until said bill of complaint was filed that any person whomsoever had proven any claim against him except Chote & Co , of Memphis, who, on the 30th of March, 1869, proved a claim amounting to $110.20, and that therefore said defendant, McDonald, had no reason to avoid, and did not in fact avoid them or either of them.

These defendants further insist that *that* the said complainant, if any rights he have in the premises, could have asserted them as well and completely in the district or circuit court of the United States for the southern district of Ohio as in said supreme court of the District of Columbia, and that all the rights and remedies of said assignee, if any he have, are in said courts of the United States for said southern

140 district of Ohio, and that they are advised that this court has no jurisdiction in the premises.

These defendants further insist that the said defendant White, by his purchase of said award from said defendant McDonald, has a lawful right to collect said award, and to apply the proceeds thereof to his own use as he may think fit, and that the said complainant has no just rights in the premises to be defeated.

A. R. McDONALD.

ROBERT CHRISTY,
Solicitor for Defendants.

UNITED STATES OF AMERICA,
County of Washington, ss:

I do solemnly swear that I have read the foregoing pleas and answer by me subscribed, and know the contents thereof, and that the
141 facts therein stated upon my personal knowledge are true, and that the facts therein stated upon information and belief I believe to be true; and that the foregoing pleas are not interposed for delay, and that said pleas are true in point of fact.

AUGUSTINE R. McDONALD.

Subscribed and sworn to before me this 19th of Dec'r, 1874.

R. J. MEIGS, *Clk*,
By L. P. WILLIAMS, *Ass't Clk.*

Robert Christy hereby certifies that in his opinion the foregoing pleas are well founded in point of law.

ROBERT CHRISTY,
Sol. for Defendants.

142 *Affidavit of T. C. Anderson.—Filed Dec.* 20, 1874.

In the supreme court of the District of Columbia.

PHELPS
vs. } No. 3910. Equity Docket 14.
McDONALD ET AL.

DISTRICT OF COLUMBIA,
City of Washington:

Tho's C. Anderson, being duly sworn, deposes and says that he knows William White, of Cincinnati, Ohio; that he last saw him in the city of Washington, D. C., about the first day of October last, at which time he had a conversation with him in relation to an assignment made by Augustine R. McDonald to him (White) of the award rendered by the Mixed Commission in said McDonald's case against the United States. That in the course of said conversation it was suggested that there were liens on the award, and that payment of the award
143 might not be made under said assignment. That the said White thereupon replied that he would not loose anything in that event because he was under no obligation to pay said McDonald anything unless he received the money on the award, and that he was fully secured in any event.

Affiant further deposes and says that he knows the said Augustine R. McDonald, and that in the latter part of October or the first part of November last he overheard a conversation in the city of Washington,

D. C., between said McDonald and one G. W. Murphy, in which the said Murphy said to McDonald, "Are you sure that you can rely on White? Is not the amount sufficient to tempt him to go back on you?" McDonald replied, "No, he will never go back on me. He is equally interested with me in forcing all the parties to come to my terms."

144 Affiant further deposes and says that within the last 10 days he heard the said McDonald in the examination of himself under oath before J. H. Mandeville, of this city, say that G. W. Murphy was his attorney and that whatever he had told him was told him in confidence.

And further that he, McDonald, had assigned his award to William White for the sum of two hundred and two thousand dollars and that he (McDonald) had no interest in said award and no control over it.

Affiant further says that from statements of the said McDonald and his conduct in this city he is convinced that said McDonald's sole object is to have said award paid to said White or to have it transferred to England and paid there for the sole purpose of defrauding his just creditors.

THOS. C. ANDERSON.

145 Subscribed and sworn to before me on this 26th day of December, A. D. 1874, the erasures and alterations on fifth & seventh lines of first page having been first made.

[SEAL.] JAS. T. K. PLANT,
Notary Public.

Affidavit of McDonald.—Filed Dec. 28, 1874.

Affidavit of McDonald.

Augustine R. McDonald, being duly sworn, says that he has known his codefendant William White for about 15 years last past, and has transacted business with him during that time to a very large amount, aggregating over half a million of dollars. That his general reputation for fair and honest dealing in the community in which he resides, to wit, in the city of Cincinnati, Ohio, is equal to that of any of the merchants and commercial men of that city.

146 That said White is a member of several firms doing a large and extensive business, to wit, W'm White & Co., and Holmes, Black & Co., of Cincinnati; of White, Duncanson & Co., of Evansville, Indiana. That affiant is informed that the said White has a large and valuable individual estate situate in the States of Ohio and Kentucky.

That the said White if he received the proceeds of said award will be abundantly able to respond to any judgment or decree of the court in the premises.

That the said plaintiff is wholly irresponsible pecuniarily, as affiant is informed and believes, and that the bond that he gave as assignee as aforesaid was in the sum of $100.00 only.

A. R. McDONALD.

Sworn to before me and signed in my presence this 28th day of December, A. D. 1874.

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, J'R, *Ass't Clk.*

117 *Exhibit J. H. M.—Filed Dec.* 28, 1874.

Exhibit J. H. M.

In the supreme court of the District of Columbia.

JOHN W. ROBERTSON
v.
A. R. MCDONALD. } At law. No. 13179.

Testimony for plaintiff adduced on the 16th day of December, 1874, before me, James H. Mandeville, examiner in chancery in the above-entitled cause by virtue of an order of David K. Cartter, chief justice of the supreme court of the District of Columbia, made by him October 30th, 1874, requiring Augustine R. McDonald to appear before me and to testify of and concerning matters and things of him asked by the plaintiff's counsel, C. A. Ray, esqr., for the purpose stated in the order, a copy of which is hereto annexed.

The witness, the defendant, having been duly sworn according to law on a previous day to the 16th December, 1874, in the course of
148 his examination on that date, testified as follows in the presence of John W. Robinson, plaintiff, Robert Christy, esqr., defendant's counsel, George W. Murphy, formerly defendant's counsel, and others.

Q. 171. Was William White of Cincinnati interested with you in the ownership or had he any interest in the cotton for the destruction of which you brought your claims before the Mixed Commission?

Answer. Neither, sir.

Q. 172. Did he ever acquire any interest in the claims while pending in the commission?

Answer. He did not.

Q. 173. Is he now the owner of the claim?

(Defendant's counsel excepts on the ground that the question is wholly irrelevant and incompetent.)

Answer. He is the owner.

Q. 174. Have you no interest in the claim or control of the same?
149 (Defendant's counsel excepts on the ground that the question is irrelevent and incompetent.)

Answer. I do not control it and am not interested in it.

Q. 175. Was M'r White aware at the time he acquired his interest in this claim of the services rendered by the plaintiff?

Answer. No, sir; I don't believe he had ever heard of the plaintiff at that time.

Q. 176. At what time was this interest acquired by M'r White?

(Defendant's counsel protests against this line of examination as wholly foreign to the case and unjust, inasmuch as it is an unnecessary consumption of the time of witness and his counsel.)

Answer. In the early part of August, 1874.

Q. 177. Was not the purpose of the transfer to avoid the payment of the plaintiff's claim?

150 (Defendant's counsel excepts and renews his protest.)

Answer. I had not seen this claim of plaintiff at that time; and I made no transfer to avoid any debt.

Q. 178. What was the consideration for the transfer?

(Defendant's counsel again excepts and protests.)

Answer. I at first offered the claim to M'r White for $204,000 in U. S. currency, and he finally consented to give $202,000.

Q. 179. Did M'r White assume the discharge of the plaintiff's claim?

Answer. M'r White assumed nothing but to pay the amount of $202,000 to me.

* * * * * * *

COUNTY OF WASHINGTON.
District of Columbia, ss:

I, James H. Mandeville, examiner in chancery in the District of
151 Columbia, hereby certify that the foregoing questions and answers from 171 to 179, inclusive, are a true copy of the original record of the testimony of Augustine R. McDonald, adduced before me on the 16th day of December, 1874.

And I further certify the following to be a true copy of the order by virtue of which the testimony was taken of the said A. R. McDonald:

In the supreme court of the District of Columbia.

JOHN W. ROBERTSON, PLAINTIFF,
v.
AUGUSTINE R. MCDONALD, DEFENDANT. } At law. No. 13179.

Comes now the plaintiff and files his affidavit, showing reasonable cause for the oral examination of the defendant, Augustine R. McDonald, before an examiner of this court; and on motion of the plaintiff it is ordered that the said Augustine R. McDonald appear before James
H. Mandeville, an examiner of this court, on the 6th day of
152 November, at 10 o'clock a. m., then and there to be examined by the plaintiff in regard to the matters stated in the declaration and particulars of demand therein.

By order of the court.

D. K. CARTTER,
Chief Justice.

(Endorsed:) John W. Robertson v. Augustine R. McDonald.

Served copy of within order on A. R. McDonald October 30, 1874.
ALEXANDER SHARP,
Marshal.

Filed Oct. 30, 1874.
R. J. MEIGS, *Clerk.*

Witness my hand and official seal, at the city of Washington, this 22d December, 1874.
[SEAL.] JAMES H. MANDEVILLE,
Examiner in Chancery, D. C.

153 *Rule to show cause, south'n dist. of Ohio.—Filed Dec.* 28, 1874.

District court United States, southern district of Ohio. In bankruptcy.

In the matter of Augustine Ralph McDonald, bankrupt.

On reading the petition of Thomas Jefferson Phelps, assignee of said bankrupt, and the affidavit of James T. Johnson filed herein, it is hereby ordered the the said Augustine Ralph McDonald appear before this

court on the 6th day of October, 1874, the same being the first day of said October term, to show cause why the said Augustine Ralph McDonald shall not be decreed to have obtained the award made by the Mixed Commission on British and American claims under the treaty of May 8th, 1871, upon claims numbered forty-two (42) and three hundred and thirty four (334) before said Mixed Commission, filed by said
154 McDonald against the United States, subject to and in trust for the payment of his just debts stated in his schedules filed in said bankruptcy proceedings, and such other just debts as he owed at the time of the filing of his petition in bankruptcy and subject to the rights of the said assignee in bankruptcy. And why the said McDonald should not be decreed to execute such deeds as will, under the rules governing the payment of said award by said Mixed Commission, enable the said assignee in bankruptcy to collect the amount of said award.

It is further ordered by the court that said Augustine Ralph McDonald be, and he is hereby, restrained and enjoined until the further order of this court from collecting or receiving, either in person, or by his agent or agents, attorney or attorneys, the amount of said award
155 or any part thereof, or from assigning, transferring, or making any disposition of the said award or any part thereof.

Witness the honorable Philip B. Swing, judge of said court, and seal thereof, at Cincinnati, this 19th day of September, A. D. 1874, and in the 99th year of the Independence of the United States of America.

Attest:

[SEAL.] THOMAS AMBROSE, *Clk.*

United States district court, southern district of Ohio. In bankruptcy.

In the matter of Augustine R. McDonald, bankrupt.

THOMAS JEFFERSON PHELPS, ASSIGNEE,
vs.
AUGUSTINE R. MCDONALD.

On motion of said assignee, by Perry & Tenny, his attorneys,
156 and for good cause shown, it is ordered that the time within which the said Augustine Ralph McDonald shall show cause as specified in the order entered herein on the 19th day of September, A. D. 1874, be, and the same hereby is, extended to the 3rd day of November, A. D. 1874.

And it is further ordered that the injunction and restraining order, stated in said order entered herein on said September 19th, 1874, be, and hereby is, continued until the further order of this court.

UNITED STATES OF AMERICA,
Southern District of Ohio, ss:

I, Thomas Ambrose, clerk of the district court of the United States for the southern district of Ohio, hereby certify the foregoing entry in the case of Augustine Ralph McDonald, a bankrupt, to be truly and correctly copied from the journal of said court, as the same is kept in this office.

157 In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Cincinnati, this 6th day of October, A. D. 1874, and in the 99th year of the Independence of the United States of America.

Attest:

[SEAL.] THO'S AMBROSE, *Clerk.*

Decree appointing receiver & for injunction.—Filed Dec. 28, 1874.

In the supreme court of the District of Columbia.

THOMAS J. PHELPS, ASSIGNEE,
v.
AUGUSTINE R. McDONALD AND WILLIAM White. } No. 3910. Eq. doc. 14.

This cause coming on to be heard upon the motion of the complainant for an injunction in accordance with the prayer of the bill to restrain the defendant from collecting from the agent of the British Gov-
158 ernment the amount of the award in favor of the defendant, A. R. McDonald, in the proceedings mentioned, it is, this 28 day of December, 1874, ordered the writ of injunction issue to restrain the defendants, Augustine R. McDonald and William White, and each of them, until the final hearing of this cause, from collecting or receiving from the agent of Her Britannic Majesty charged with the duty of paying the awards of the Mixed Commission under the treaty between the United States and Great Britain of May 8, 1871, the amount of the award of said commission in respect of the claim in the case of Augustine R. McDonald vs. The United States, described in the bill of complaint.

And the counsel for the defendants stating in open court that there is danger that the fund may, if not drawn from the hands of the British agent on or before the 31st day of December, A. D. 1874, be re-
159 mitted to England, it is further ordered that George W. Riggs be and he is hereby, appointed receiver of this court, with authority to collect and receive from the said agent of the British Government the amount payable to the said A. R. McDonald and W'm White, and each of them, in respect of the said award, and to hold the same until and subject to the further order of this court.

By the court.

A. WYLIE.

Demurrer to pleas of def't.—Filed Jan. 2, 1875.

In the supreme court of the District of Columbia.

THO. J. PHELPS, ASSIGNEE,
vs.
A. R. McDONALD & WILLIAM WHITE. } In equity. No. 3910.

The complainant demurs to the pleas of the defendant.

JNO. D. McPHERSON,
Sol. for Comp't.

I certify that the above demurrer is well founded in matter of law.

JNO. D. McPHERSON,
S'r for Pl'ff.

160 *Replication to ans. of def'ts.—Filed Jan.* 2, 1875.

In the supreme court of the District of Columbia.

THOS. J. PHELPS, ASSIGNEE,
vs.
A. R. McDONALD AND WILLIAM WHITE. } In equity. No. 3910.

The complainant joins issue upon the answer of the defendants.

JNO. D. McPHERSON,
Solicitor for Comp'ts.

Order enlarging time for taking testimony.—Filed Feb. 16, 1875.

Supreme court of the District of Columbia.

THO. J. PHELPS
vs.
A. R. MCDONALD & WHITE. } In equity. No. 3910.

On motion of M'r MacPherson the time for taking testimony in this cause is enlarged for thirty days from this 16 day of February, A. D. 1875.

By the court.

A. W.

161 *Decree ordering one-half of fund placed in hands of receiver, &c.—Filed Feb.* 16, 1875.

In the supreme court of the District of Columbia.

THOMAS J. PHELPS, ASSIGNEE,
vs.
AUGUSTINE R. MCDONALD AND WILLIAM WHITE. } In equity. No. 3910.

This cause came on to be further heard on this 16th day of February, A. D. 1875, and thereupon and upon consideration thereof and with the consent of the parties to this suit, and of Charles E. Hovey and William P. Dale, parties complainant in a certain cause in equity in this court, numbered 3937, against the same defendants, and claiming one-fourth of the award in the proceedings mentioned, it is this 16th day of February, A. D. 1875, ordered, adjudged, and decreed:

1. That the restraining orders heretofore made in both said causes are hereby vacated.

162 2. That the decree made in this cause on the 28th day of December, A. D. 1874, appointing George W. Riggs, esq., receiver, and granting a provisional injunction, is modified as follows, viz: That the defendant William White may receive from the agents of the British Government the one-half of the net amount of the award in the proceedings mentioned free and discharged of all claims of the plaintiffs in both the causes above mentioned, to enable the said defendant to pay the expenses incurred by the defendant A. R. McDonald in the prosecution of this claim, which sum of one-half of said award the court finds to be the reasonable expense incident to the prosecution of the said claim by said defendant A. R. McDonald before said Mixed Commission, exclusive of said claim of Hovey and Dale.

163 3. That the remaining half of the nett amount of said award shall be paid to the said George W. Riggs, and it is ordered, adjudged, and decreed that the defendant shall execute all such orders, receipts, and acquittances necessary to enable the said George W. Riggs to collect the same. And the said George W. Riggs shall hold the said half of the said award subject to the claims, liens, and rights of the said Charles E. Hovey and William P. Dole and of the plaintiff in this cause, to be determined by the further decree of this court in this cause, and in the cause of said Hovey and Dole hereinbefore mentioned.

It is further ordered that said receiver be directed to invest the money so placed in his hands in bonds of the United States, or in 3.65 bonds of the District of Columbia guaranteed by the United States, as he

164 may deem best for the interest of the parties concerned. And that a copy of this decree be filed in the last-numbered cause.

By the court.

A. W.

We consent to the foregoing decree.

JNO. D. McPHERSON,
For Tho's J. Phelps, Assignee.
ROBERT CHRISTY,
For A. R. McDonald & William White, Defendants.
H. H. BLACKBURN,
Attorney for Charles E. Hovey and W. P. Da'e.

165 *Stipulation for taking testimony.—Filed Feb.* 20, 1875.

Supreme court of the District of Columbia.

THOMAS J. PHELPS, ASSIGNEE,
v.
AUGUSTINE R. McDONALD AND WILLIAM WHITE. } In equity. No. 3910.

It is agreed that the testimony that may be taken pursuant to agreement between Thomas A. Logan, for complainant, and Jordan, Jordan & Williams for defendants, all of Cincinnati, Ohio, may be read in evidence on the hearing of this cause.

JNO. D. McPHERSON,
Sol'r for Comp't.
ROBERT CHRISTY,
Att'y for White & McDonald, Def'ts.

166 *Demurrer to bill of complaint.—Filed April* 21, 1875.

In the supreme court of the District of Columbia.

THOMAS J. PHELPS, ASSIGNEE, &C., COMPLAINANT,
vs.
AUGUSTINE R. McDONALD AND WILLIAM WHITE, defendants. } Equity doc. 14. No. 3910.

The defendants, Augustine R. McDonald and William White, respectively, by protestation, not confessing or acknowledging all or any of the matters and things contained in the said complainant's bill to be true, in such manner and form as the same are herein set forth and alleged, do demur thereto, and for cause of demurrer they show that the said complainant, by his said bill, as these defendants are advised, sets forth that the said defendant, McDonald, on the 19th day of December, 1868, filed his petition in bankruptcy in the district court of the United
167 States for the southern district of Ohio, and was on said day declared a bankrupt; that on the 5th day of January, 1869, the said complainant, Thomas J. Phelps, was duly appointed as assignee, and on the 12th of February, 1869, the said assignee, in conformity with the act of Congress, received from the register in bankruptcy all the property belonging to the said defendant McDonald on the said 19th day of December, 1868, and which would pass to the said assignee under and by virtue of the law in such case made and provided, together with all the

property conveyed by the bankrupt in fraud of his creditors; or rights in equity, choses in action, patents and patent-rights and copyrights; all debts due him or any person for his use, and all liens and securities therefor; and all his rights of action for property or estate, real or personal, and for any cause of action which the bankrupt had
163 against any person arising from contracts or from the unlawful taking or detention, or of injury to the property of the bankrupt, and all his right of redeeming such property or estate; that on the 17th day of March, 1869, the said defendant McDonald received his discharge in bankruptcy, wherefore these defendants respectively say that this court has no jurisdiction of the subject-matter of this action, the same being an attempt by the said complainant, Phelps, as such assignee, to obtain an order upon said defendant McDonald, restraining him from collecting or receiving the amount of the claim or award, or any part thereof, mentioned in said bill, and requiring him to execute such deeds as will enable the said complainant, in his character of assignee in bankruptcy, to collect the amount of said award;
169 exclus'e jurisdiction of which subject-matter is in and remains in the district court of the United States for the southern district of Ohio.

And for further cause of demurrer the defendants respectively show, that by said bill of complaint the said cause of action, if any cause there be, accrued to the plaintiff herein on the 12th day of February, 1869, and this bill of complaint was not brought within two years from the time when the cause of action accrued for such assignee.

And for further cause of demurrer these defendants respectively say, that the complainant's bill of complaint in case the same were true, which these defendants do in nowise admit, contains not any matter of equity whereon this court can ground any decree or give the complainant any relief or assistance as against them, these defendants, in that the
170 said alleged promise of protection from the President of the United States and alleged directions to the officers of the Army and Navy to assist the said McDonald, as opportunity offered, in getting out such cotton as he might purchase, and the permit from the Treasury Department of the United States authorizing him (McDonald) to purchase cotton in the insurrectionary States and the subsequent burning of the said cotton by the Army of the United States, as set forth in said bill of complaint, did not on the said 19th day of December, 1868, nor on the 12th day of February, 1869, give a right of action in favor of the said McDonald, defendant, nor in favor of the complainant, Phelps, against the United States. Nor did any claim or right by reason of the matters set forth in said bill of complaint pass to the said assignee.

171 And in that the facts alleged in the said bill of complaint show that the award which it is the purpose of said bill to reach and subject to the said proceedings in bankruptcy, was so rendered upon account of the destruction of certain cotton belonging to said McDonald, which destruction, if the foundation of any action or right of action, was an action for tort, and did not pass to the assignee by virtue of any law of the United States.

And in that, as appears by the said bill of complaint and by the treaty of May 8th, 1871, between the Government of the United States and the British Government, therein referred to, no ground of action nor any right of action for the destruction of the cotton mentioned ever existed in the said McDonald against the United States in favor of said
172 assignee by virtue of said assignment in bankruptcy against the United States.

Wherefore these defendants respectively demand the judgment of this honorable court whether they shall be compelled to make any other or further answer to said bill, or any of the matters and things therein contained, and pray to be hence dismissed, with their reasonable costs in this behalf sustained.

CHA'S A. RAY,
Solicitor for A. R. McDonald & William White.

I certify that in my opinion the demurrer of defendants, A. R. McDonald and William White, to the bill of complaint herein is well founded in point of law.

CHA'S A. RAY,
Solicitor for Defendants.

173 In the supreme court of the District of Columbia.

THOMAS J. PHELPS, ASSIGNEE,
vs.
AUGUSTINE R. McDONALD & WILLIAM WHITE. } In equity. No. 3910.

The defendant, Augustine R. McDonald, being duly sworn, on his oath says that the demurrer by the defendants to the bill of complaint herein is not interposed for delay.

AUGUSTINE R. McDONALD.

STATE OF VIRGINIA,
City of Richmond, to wit:

This day personally appeared before me, the undersigned, a notary public for the city aforesaid, Augustine R. McDonald, and made oath that the contents of the foregoing writing are true to the best of his knowledge and belief.

Given under my hand and official seal this 2d day of April, 1875.

[SEAL.] J. A. RICHARDSON, *N. P.*

174 *Final decree.—Filed June* 28, 1875.

In the supreme court of the District of Columbia. June 28, 1875.

THOMAS J. PHELPS, ASSIGNEE, COMPLAINANT,
vs.
AUGUSTINE R. McDONALD AND WILLIAM WHITE, defendants. } Equity doc. 14. No. 3910.

This cause came on to be heard on the demurrer of William White, defendant, and upon the demurrer of Augustine R. McDonald, defendant, to the bill of complaint, at this term, and was argued by counsel; and thereupon, upon consideration thereof, it is ordered, adjudged, and decreed as follows, viz: That the demurrer to the said bill of complaint be sustained, and the bill of complaint herein is dismissed at the costs of the plaintiff. And that the receiver, George W. Riggs, appointed in this case and in Hovey & Dole vs. McDonald & White, No. 3937, be directed to pay the funds belonging to said cause to the said defendants & McDonald & White or order, and thereon said receiver shall be discharged.

By the court.

A. WYLIE, *Justice.*

175 *Appeal to gen. term, June* 28, 1875.

In the supreme court of the District of Columbia.

THOMAS J. PHELPS
vs.
AUGUSTUS R. MCDONALD ET AL. } 3910. Equity docket 14.

Enter appeal to the general term from the decree of the court in special term sustaining the demurrer and dismissing the bill.

JNO. D. MCPHERSON,
Sol'r for Complainant.

Appeal to gen. term entered.
By the clerk.

Appeal bond to gen. term.—Filed 16 *July*, 1875.

In the supreme court of the District of Columbia, the 16 day of July, 1875.

THOMAS J. PHELPS, PLAINTIFF,
vs.
AUGUSTIN' R. MCDONALD AND WILLIAM WHITE, defendant. } No. 3910. Equity.

The plaintiff having appealed to the general term from the decree pronounced herein on the 28th of June, 1875, in the special term, he and Daniel W. Bell and James H. Wear, sureties for said appeal, for themselves and each of them, their and each of their heirs and personal representatives, appearing and submitting to the jurisdiction of the said general term, hereby undertake to abide by, perform, and pay its judgment, which they agree may be pronounced against each and all of them.

T. JEFF. PHELPS, *Appellant.*

Witness to the signature of T. J. Phelps:
J. F. HEGNAR.

DANIEL W. BELL,
J. H. WEAR,
Sureties.

Approved.

A. WYLIE.

176 *Decree in gen. term, Feb'y* 19, 1876.

In the supreme court of the District of Columbia, in general term, February 19, 1876.

THOMAS JEFFERSON PHELPS, CO'PL'T,
vs.
AUGUSTINE R. MCDONALD & WILLIAM WHITE, def'ts. } No. 3910. Equity dock. 14.

This cause having been heard upon the record of the special term, and been argued by counsel and submitted to the court, it is thereupon, his 19th day of February, 1876, ordered, adjudged, and decreed that the decree in the special term of June 28, 1875, from which the appeal to

this court was prosecuted, be, and the same is hereby, affirmed with costs.

Justice Olin and Chief Justice Cartter dissenting.

And from this decree the complainant, by his solicitor, here now in open court prays an appeal to the Supreme Court of the United States, and the same is allowed.

By order of the court.

177 *Opinion of the court in gen. term.*

Supreme court of the District of Columbia, in general term, January, 1876.

THO'S JEFFERSON PHELPS, ASSIGNEE IN BANKRUPTCY of Augustine R. McDonald,
vs.
AUGUSTINE R. McDONALD AND WILLIAM White. } In equity. No. 3910.

M'r Justice Wylie delivered the opinion of the court:

The cause was heard at the special term in equity on general demurrer or the defendants to complainant's bill. The demurrer was allowed in that court, and the bill dismissed. From that decree the cause has come here on complainant's appeal. Previously to filing the demurrer, the defendants had put in an answer, to which no replication had been filed by the complainant. Having elected to make their defense by way of answer, it was too late for the defendants to demur except by agreement of counsel. After this, other counsel having appeared for defendants, such an agreement was entered into by counsel for their respective clients, and was filed in the cause. Thus the cause came on to be heard upon the demurrer to the bill, without regard to the answer, or to any other proceedings which had taken place, of an interlocutory character. The court was thus not at liberty to know that any answer had been filed, or that any facts connected with the case existed, except only such as appear upon the face of the bill itself, including its exhibits.

Whilst a demurrer lies only for defects which are patent on the face of the bill, and is bad if it asserts matters of fact outside of the bill, it is equally clear on the other hand that if the case made by the bill itself be insufficient to entitle the complainant to the relief he seeks, he cannot be allowed to fortify the case so made by invoking aid to his bill from matters of fact which do not appear upon its face. (See Story Eq. Pl., sec. 433 et seq.)

These are fundamental principles of pleading by which every court is bound, and which generally they endeavor to observe. It is to be assumed, therefore, that in deciding the issue in the present case, this court will know nothing, except the facts properly stated in the bill itself, or its exhibits. To that rule we propose, on this occasion, strictly to adhere.

The subject of controversy in the present case is an award of $197,190, made by the commissioners under the twelfth article of the treaty of 1871 between the United States and Great Britain. That award was not signed by the American commissioner, for reasons of which we are not informed. It is in the following words:

AUGUSTINE R. McDONALD
vs.
THE UNITED STATES. } Nos. 42 and 334.

We award the sum of one hundred and ninety-seven thousand one

hundred and ninety dollars, to be paid in gold by the Government of the United States to the Government of Her Britannic Majesty, in respect of the above claim.

L. CORTI,
RUSSELL GURNEY,
Commissioners.

McDonald was a subject of Great Britain, who claimed before the commission that in the early part of the year 1864 he obtained a permit from the Treasury Department, and a letter from the President, with which he proceeded to the States of Arkansas and Louisiana, where he purchased a large quantity of cotton, which was subsequently destroyed by troops of the United States whilst engaged in belligerent operations. At the time he obtained his license, as he claimed it to be, it was lawful for the President to authorize licenses to trade with the enemy in special cases, under regulations prescribed by the Secretary of the Treasury. Subsequently to the purchase of his cotton the act of Congress of July 2, 1864, was passed, which forbade the granting of such licenses and revoked those which had theretofore been issued; and in February, 1865, the cotton was said to have been destroyed. McDonald claimed that he had made his purchases under a license from the United States in May and June, 1864; that the act of Congress of 2d July revoked his license, in consequence of which he was unable to remove his cotton, and its destruction took place in February, 1865. And this was the foundation of his claim before the commissioners. After the claim had been allowed by the commissioners, and the money was yet in the Treasury of the United States, but ready to be paid over to the British Government as required by the treaty, the bill in the present suit was filed, by which the complainant asked this court to compel McDonald to execute an assignment to complainant of the money so awarded
178 to be paid to the British Government in respect of the claim, and for an injunction to restrain McDonald from receiving the money.

The complainant claims that the fund belongs to him by reason of certain proceedings in bankruptcy in the southern district of Ohio, which took place in 1868 and 1869, under which McDonald was discharged as a bankrupt on his own petition, and all his property passed to the complainant as assignee, including the right to the fund here in controversy. It may be conceded that so far as the claim in question could be affected by the laws of this country it did pass to the assignee in bankruptcy, according to the principles affirmed in Comegys vs. Vass, 1 Peters, 193. That was a case which arose under the treaty of 22d February, 1819, with Great Britain. The commissioners in that case had made an award in favor of the assignee in bankruptcy, and the money was paid to him. Vass, the bankrupt, brought an action to recover this money from the assignee, on the ground that the claim had not passed under the bankrupt assignment. But the court held that it was such right, or claim, as could and did pass under that assignment. Both parties were citizens of this country, and the money had actually been received by one of them.

An abstract of the proceedings in McDonald's bankruptcy is attached to the bill as an exhibit. These show that on the 17th March, 1869, the applicant, McDonald, received his final discharge. It also shows that on the day immediately preceding, on the application of the assignee, McDonald was examined under oath as to the nature and condition of his property, and that this examination was reduced to writing and filed in the proceedings. The complainant has not supplied us with a copy

of this paper. Had it shown any want of truth, or contained false representations calculated to mislead his creditors as to the character and value of the claims in question, doubtless it would have been set forth. The bill itself, however, charges nothing of the kind in regard to that examination.

On the 17th of March, 1869, then, the bankrupt was finally discharged, free of his old debts, and entitled to all his future acquisitions.

About six months subsequent to the bankrupt's discharge, the assignee (this complainant), under authority from the court, sold the amounts, judgments, &c., late the property of the bankrupt, to William White, one of the defendants in this suit, for the sum of twenty dollars. The bill in this case does not affect to deny that McDonald's claim against the United States on account of the destruction of the cotton in question constituted a part of the subjects thus sold.

But it asserts that the cotton claim did not pass under that sale, for several other reasons; first, because White, in fact, made the purchase on behalf of McDonald, and with McDonald's money. But there is nothing, we think, in that objection. McDonald had received his final discharge six months previously to the sale, and had he thought proper, or found it convenient, might have been the purchaser in his own name.

The third reason set out in the bill against the validity of that sale to White is because in his application before the commissioners under the treaty McDonald made no mention of the fact that such a sale had taken place, as by the rules of the commission it was his duty to make known in such case.

But if the sale to White was for McDonald's use, then it might well be said that no transfer had been made. The claim was still McDonald's, under a fair purchase, although for a time it had belonged to his assignee in bankruptcy.

But suppose the sale was made to White for his own use, how could the concealment by McDonald of that fact from the commissioners invest the assignee with any title? His title was already gone by the sale.

The third objection to the validity of the sale made by the assignee is that in the schedule of his assets McDonald describes one only of his claims as being against the United States, but the other is described as being a claim against General Osborne, of the United States Army, and others, for burning, in January and February, 1865, from 1,000 to 2,000 bales of cotton in Arkansas and Louisiana. (This claim by an amended schedule was subsequently enlarged to 7,000 or 8,000 bales, and marked "worthless.") It is not charged in the bill that the error in stating that the claim was against General Osborne and others, and not against the United States, was committed with any design of fraud on the part of McDonald, but that it was calculated to mislead as to its value—a claim against the government being of greater value than one of the same character against an individual, or, at any rate, that it was not a correct description.

But in that matter the act of General Osborne was the act of the government, which was responsible for his conduct and this was known, so that it was substantially a statement that the claim was one against the government.

Besides this, the bankrupt proceedings which are referred to as an exhibit, show that on the very day preceding the bankrupt's discharge, he was examined under oath as to the condition of his property, when an opportunity was afforded to the assignee and creditors to obtain all the information they could desire as to the value and character of this claim;

and this information was probably obtained, but the complainant has neglected to annex it as an exhibit to his bill.

Another objection made to the way in which McDonald described his claim in the schedule is that it contains no reference to the license under which McDonald claimed to have purchased the cotton, and which was essential to the validity of any such claim against the government.

But this objection appears to be quite as groundless as either of the others. If it be necessary that the bankrupt should not only specify the amount and character of his claim, and the party against whom it exists, as he did in the present instance, but also state the evidence and other muniments to sustain it, probably no schedule in proper form has ever been filed in any bankrupt court.

The mere assertion of a claim on account of cotton destroyed by an invading force in the enemy's country, amounts in itself to an implication that the claimant relied upon the protection of a government license in its purchase, otherwise the claim would be preposterous on its face. Having, therefore, asserted a claim at all against the United States in his schedule, he asserted a claim which all men knew could be good only under a license.

But in none of these respects, or any other respects, does the bill make a charge of any fraudulent purpose on the part of McDonald.

We are now brought to the point at which it is charged that the claim, as enlarged in the amended schedule, was marked by McDonald "worthless." If the claim, at the time, was, indeed, known by McDonald to be of considerable value, or if he had reason to believe that it was valuable, ar acted upon such belief, then this case would have fallen within the ruling in Clark vs. Clark (17 How., 315).

But, at best, the claim, at that time, was but a mere possibility of value. As against the United States directly, McDonald could assert no claim. He was a subject of Great Britain, and as such could claim the interposition of his government on his behalf. There was a possibility of a treaty, but in making treaties private interests are often sacrificed for political considerations. A treaty might be made some time in the future or might not. If made, the period might be remote; and whenever made, it might contain no provision for his case.

Under these circumstances, McDonald might fairly have set down his claim as "worthless."

I propose now to go further, and to show from the face of this bill and its exhibits that the claim in question was utterly without foundation or value at the date of the proceedings in bankruptcy, and that White, who bought it for twenty dollars, paid more than it was worth.

By the laws of war, property found in the country is liable to destruction by the invading force without regard to whether it belong to enemy, neutral or friend. Its location makes it all enemy property, and if it in fact be property of a neutral, he will have no right to compensation for his loss.

Foreigners who reside in the enemy's country in time of war must share the inconveniences of its citizens. The law upon this sub-
179 ject was clearly stated by M'r Marcy, when Secretary of State, in answer to a demand made by the French Government upon the United States for indemnity on account of losses sustained by French citizens from the bombardment of Greytown by a naval force of the United States, as follows:

"No power assailing an enemy's country is required to discriminate between the subjects of that country and foreigners domiciled therein, nor can the latter, with any better right than the former, claim indem-

nity in any case except from the country under whose jurisdiction they have placed themselves."

Nevertheless a license to trade with the enemy may be granted by a belligerent state to its own subjects, to neutrals, or even to subjects of the enemy, and operates as a dispensation with the laws of war, so far as its terms may fairly be construed to extend, but being a high act of sovereignty it is necessarily stricti juris, and must not be carried further than a clear construction of its terms will permit. See Lawrence's Wheaton, 690, 691.

The leading case on this subject is that of the Hope, which was an American vessel, laden with corn and flour, captured whilst proceeding from the United States to a port in Spain occupied by British troops, under a license granted by the British consul at Boston, accompanied by a letter of approval from the admiral on the Halifax station. Sir William Scott pronounced judgment condemning the vessel as lawful prize, on the ground that neither of these officers possessed authority from the government to grant a license to the ship to trade with the enemy.

By the act of Congress of 13th July, 1861, the President was authorized, in his discretion, to grant licenses to trade with the inhabitants of the insurrectionary States; and such intercourse, so far as by him licensed, should be conducted and carried on only in pursuance of rules and regulations prescribed by the Secretary of the Treasury.

In pursuance of the authority conferred by this law, rules and regulations were issued by the Secretary of the Treasury at different times and promulgated by order of the President. Such as are appropriate to the facts of this case as stated in the bill will be referred to presently. All these several series of regulations are expressly made exhibits to this bill, and are, therefore, proper to be considered on this demurrer. The complainant was bound to state in his bill the authority under which McDonald proceeded to the enemy's country for purposes of trade, and to show that the license was in all respects such as the law of Congress permitted, otherwise the bill itself shows that he acted without license, and that his claim was without foundation.

The bill does state that he had a letter from the President recommending him to the protection of the officers of the Army. It also states that he received a promise of protection and necessary permits from the Treasury Department. But neither the letter nor the permits are set out in the bill, or any of the exhibits; nor does it pretend to state their substance, nor even that the permit was signed by the Secretary, or signed by any one. What constituted a necessary permit was such a permit as the law authorized, and the bill affords us no light as to the character of McDonald's permit, except the expression of an opinion on his part that it was such a permit as he needed for his purposes. Had the permit been exhibited, or its substantial contents stated in the bill, perhaps we might have differed from this complainant as to its character. At all events, we have a right to know something more on this subject than we find in this bill. The rule is that the bill should state the right, title, or claim of the complainant with accuracy and clearness. (See Story Eq. Pl., sec. 241.) In the case of Dainese vs. Hale, decided by the Supreme Court of the United States at the present term, M'r Justice Strong, in pronouncing the opinion, says: "One who seeks to shelter himself from personal liability for an alleged tort on the ground that the act complained of was committed by him in the exercise of consular jurisdiction must set forth the laws, usages, &c., which authorized that jurisdiction."

In the present case the value of McDonald's claim, if any, depended upon his license. The act of Congress alone could make the license lawful. No permit granted by any officer of the government, the Army, or Navy, could relieve him or exempt his property from the liabilities of an enemy, except such as was issued strictly in pursuance of the law.

By the act of Congress of 13th July, 1861, the President was vested with discretionary authority to prescribe in what cases and on what terms a partial intercourse might be permitted with the States then in rebellion. In pursuance of this authority he directed the Secretary of the Treasury to prescribe the regulations which were issued by that officer on the 4th March, 1862. These regulations were still in force at the date when McDonald claims that he obtained a letter from the President and a permit from the Treasury Department to go into the Southern States for the purpose of buying cotton; and were expressly made subject to future modification or revocation.

The first of these regulations declared that "all licenses shall be issued by the Secretary of the Treasury, and all applications therefor must be made in writing to him, stating specifically the purpose for which the license is desired, and, if for general or special trade, setting forth the character and aggregate value of the merchandise to be transported to the destination thereof, and the proposed route of transportation; and also the character of the merchandise, if any, desired in exchange, with the proposed route of transit thereof, and its destination."

The second regulation prescribes that "before the delivery of any license the party therein permitted to trade shall execute a bond to the United States with sufficient sureties in the penal sum of at least twice the amount of the trade so licensed, which bond shall be subject to such approval and conditioned on such terms as shall be specified in the license."

Along with the promulgation of these regulations the Secretary of the Treasury gave notice that they were to remain in force so long as the condition of hostilities shall continue, unless sooner modified or revoked.

It would have been more satisfactory—it was indispensable—to show in this bill that McDonald's license was in strict conformity to these regulations.

Nowhere is there to be found, however, any regulation which authorized a license to purchase cotton in the South and bound the United States to protect such cotton from dangers of war.

But the ground of McDonald's claim against the United States was that he bought his cotton under a permit, and before he could get the cotton away under his permit his license to trade and transport was revoked by act of Congress of 2d July, 1864.

It is a sufficient reply to that ground of claim to say that it was a time of war, when parties who ran risks sometimes made large profits and sometimes met with great losses. The permit in this case, if one was ever granted, was obtained on the express condition that it might be revoked at any time. McDonald, with eyes open, chose to take his permit on that condition. In one month, or perhaps two, after the cotton was purchased, the permit was revoked by the act of Congress of 2d July, 1864. I can see no ground for damages from that cause.

There is still another ground upon which, in my judgment, his claim against the United States was worthless. According to his statement, the cotton was bought in the months of May and June, 1864, and not destroyed till February, 1865. At the time of its destruction it is not even alleged that he was present himself, or had any agent or servant

in charge of it, or that in any respect he exercised the slightest care for its protection; or that notice was given to General Osborne, or any officer of the force by which it was destroyed, of the existence of his license, if he had one.

If indeed the cotton was there and owned by him, it was not distinguished from that of the enemy, and therefore subject to all the contingencies of war in a hostile country. Property so situated, and of that value, should have had the personal guardianship of its owner. If a license for its protection existed, and had been shown to General Osborne, as in that case it ought to have been, the cotton would not have been destroyed. No military officer can violate a safe conduct or lawful permit, except at his utmost peril.

But it is claimed that McDonald might have brought away the cotton but for the passage of the act of July 2, 1864. We have already seen that this was one of the risks which, after full notice, he chose to assume. Besides, the bill contains no averment that he made use of any diligence to bring it away either before or after the passage of that act, until about the time it was destroyed, when it is stated he procured a special permit for that purpose from the government here, but that before he could act under it the cotton was destroyed. But why should he care to incur the hazards of transportation in such a time and in his circumstances? The license from this government, had he shown it, would have been his sure protection, and he alleges that he had also obtained a similar license from the Confederate authorities. With the exercise of the commonest discretion, his cotton was safe from danger on either side. If his story be true, the cotton was lost by his own neglect, and his claim against the United States or General Osborne was indeed, as he stated, utterly worthless. He knew this better than any one else, and marked it so in his schedule.

Under these circumstances, the worthless claim was sold by the assignee in bankruptcy and purchased by White for more than its value. It matters nothing whether White bought the claim on account of McDonald or for himself. Six months prior to that transaction McDonald had been discharged under the bankrupt proceedings, and thereafter had a perfect right to the proceeds of his own industry and enterprise, and to make his investments in what way he pleased. Concede that the sale to White was on his account, it shows that he was not at that time looking forward to the treaty of 1871, under which the claim should be made valuable, through the power of the British Government. The claim derived all its value from that treaty. It was one of those chances which sometimes happen to create fortune for the recipient without merit or exertion on his part. In itself the claim was without value, but the British Government took it up, and by paying equivalents to the United States procured its allowance. And now the very assignee in bankruptcy who made the sale steps forward and asserts a claim to the fund in the face of his own acts, done with the sanction of his court, and which were all valid and regular at the time, for no other reason than that the property which was worthless when he sold it has turned out to be valuable in the hands of the purchaser from considerations which could not have been foreseen, and which were independent of its merits.

Lengthened as this opinion is already, I cannot bring it to a conclusion without adverting to another view of the case, which, on the face of this bill, demands attention.

By the twelfth article of the treaty of 1871 it was provided that a commission should be chosen by the respective parties to the treaty,

who should have the power to determine upon all claims which the respective governments should present on the part of their respective citizens against either of the governments of the character therein described. These claims were to be prosecuted only by counsel appointed by the respective governments, and only on evidence so furnished. There was to be no private interference. The contestation was to be between the one government and the other only. And by the fifteenth article it was provided that "all sums of money which may be awarded by the commissioners on account of any claim shall be paid by the one government to the other, as the case may be, within twelve months after the date of the final award, with interest, and without any deduction save as specified in Article XVI of this treaty."

By the fourteenth article it was provided that these commissioners should be competent "to decide in each case, whether any claim
180 has or has not been duly made, preferred, and laid before them, either wholly or to any and what extent, according to the true intent and meaning of the treaty."

The money was to be paid over by the Government of the United States into the hands of the British Government.

The object of this bill is to compel the defendants to make a written assignment or transfer to the complainant of the claim so held by McDonald against the British Government under the award of the commissioners in his case.

There are at least two insuperable obstacles arising out of the treaty which, in our judgment, forbid our exercise of jurisdiction in this matter. The first arises from the express language of the thirteenth article, which declares that "the high contracting parties hereby engage to consider the decision of the commissioners as absolutely final and conclusive upon each claim decided upon by them, and to give full effect to such decisions, without any objection, evasion, or delay whatsoever."

Concede the right of this complainant to the fund in controversy; the fund is in the hands of the British Government for its administration, placed there in trust, to be disposed of under its contract, "to give full effect to such decisions."

The British Government is the tribunal created by the treaty itself to dispose of the money. With the manner of performing that duty, neither this government nor any of its courts can interfere. The treaty determines that question.

The money is in England and in the hands of that government, to be disposed of with no accountability to any other government or authority whatever. To exercise jurisdiction in such a case by this court would be vain and nugatory. The British Government might respect our decisions, but that would be just as it pleased. Were we to decree here that the money was the property of this complainant, and that McDonald should execute to him an assignment thereof, our decision would be simply nugatory.

In Story's Equity Pleadings, sec. 489, the author says:

"In general, the fact that the property is not within the jurisdiction constitutes no bar to a proceeding in a court of equity, if the person is within the jurisdiction, for a court of equity acts upon the person, or, to use the appropriate phrase, æquitas agit in personam. But questions may arise under a bill respecting funds, or other things in a foreign country, so purely local that a court of equity in another country might very properly decline to interfere, and remit it to the domestic forum."

It is quite true that suits in equity were entertained in this court to determine the right to awards made by the commission which sat here

under the treaty of Guadaloupe Hidalgo, but that was where the fund was within the jurisdiction of the court, and a statute had expressly provided that such suits might be brought to determine rights as between citizens of the United States. It was also decided in Comegys vs. Vasse (1 Peters, 193) that the commissioners under the treaty with Spain of 22d February, 1819, had power to decide upon the amount and validity of claims, but not upon the conflicting rights of parties to the sums awarded by them, which belonged to the courts.

But in that case the controversy was between two citizens of the United States, and the fund was here to be administered by this government and paid to its own citizens. Suppose in that case that Comegys, the assignee in bankruptcy, in whose favor the award was, had happened to be in Spain, and some citizens of Spain had there brought a suit against him, claiming the proceeds of the award; would any one contend that such a proceeding could have been maintained in that country, or if so, would have been respected in this? It would have been a sufficient answer to reply that by the terms of the treaty the awards made were to be for claims of American citizens against Spain, and that the American Government had undertaken to pay these awards through its own tribunals, executive or judicial. And yet that would have been a less objectionable proceeding than this one, for the terms of the Spanish treaty conferring jurisdiction over the subject on the American Government are not nearly so comprehensive and emphatic as those contained in the treaty of 1871, conferring jurisdiction upon the British Government in respect of the awards in favor of its subjects.

These remarks are equally applicable to the case of Freval vs. Bach (14 Peters, 95), which was a controversy between American citizens as to the division of a sum of money received by the United States from the Government of France under the treaty of July 4, 1831.

Had some French citizen claimed a right to this fund, and sought to enforce his claim by a decree obtained in a French court in personam against an American who happened to be found in that country, it would have been a case like the present. I cannot imagine that such a decree would have been respected by the government of this country, to which the money had been paid with authority under the treaty to dispose of it amongst American claimants.

The fund in controversy in the present case is in England for all the purposes of this case, and, since its payment, has never been within the United States. From this proposition another question arises which has not yet been considered, and that is, whether the title to this fund could have passed to this assignee under the assignment in McDonald's bankruptcy?

In England the doctrine is that the bankrupt assignment transfers all the bankrupt's personal property wherever situated, but such is not the law as held by the courts of this country. In Oakey vs. Bennet (11 How., 33), it was held by the Supreme Court of the United States that a decree in bankruptcy passed in 1843 by the district court of the United States for the eastern district of Louisiana did not pass to the assignee real property in Texas, which at that time was a foreign country. In that case the court say (McLean, J.): "A statutable conveyance of property cannot strictly operate beyond the local jurisdiction. Any effect which may be given to it beyond this does not depend upon international law, but the principles of comity, and national comity does not require any government to give effect to such assignment when it shall impair the remedies or lessen the securities of its own citizens. And this is the prevailing doctrine in this country. A proceeding in rem

against the property of a foreign bankrupt, under our local laws, may be maintained by creditors, notwithstanding the foreign assignment."

The same views are to be found in Lawrence's Wheaton, 2d edition, p. 162, where it is said that "All the effect which foreign laws can have in the territory of a state depends absolutely on the express or tacit consent of that state. A state is not obliged to allow the application of foreign laws within its territory, but may absolutely refuse to give any effect to them." And at page 163 the author quotes the following maxim from Huberus: "By the comity of nations, whatever laws are carried into execution within the limits of any state are considered as having the same effect everywhere, so far as they do not occasion a prejudice to the rights of other states and their citizens."

Our bankrupt law, therefore, and any proceedings under it can propose no extraterritorial operation, except as permitted by the laws of other countries. Of itself the assignment in bankruptcy transfers no title whatever, even as to personal property whose situs is beyond the United States. Foreign judicial tribunals, however, on the principle of comity, will give effect to such assignment whenever such action would not interfere with the rights of their own governments or subjects. In the case before us now, by the express terms of the treaty, the exclusive administration of the fund has been committed to the British Government. A claim of jurisdiction on our part would be directly in conflict with that conferred by the treaty; the ground of comity is swept away, the money is beyond our reach, and this bankrupt assignment would be a nullity in England, because it is conflict with the treaty, which is the law of that country as it is of this.

It was on a similar principle that the lord chancellor in ex parte Blake (1 Cox R., 393) refused the petition of an assignee in bankruptcy to execute an assignment to him of claims due to the bankrupt in America. In that case the lord chancellor said: "My difficulty in making such an order as is now prayed against the bankrupt is this, namely, that if he refuses I must commit him, and yet, in contemplation of our laws, the very instrument he is required to execute is of no effect."

In Wharton's Conflict of Laws, section 843, the law is thus stated: "That notwithstanding the attachment (by which is meant the assignment in bankruptcy) the bankrupt still retains his capacity to dispose of his property in foreign lands. This capacity remains to him as to such property until divested by the judex rei sitæ. This point is abundantly settled by decisions, both in Germany and France, as well as in the United States. But the domestic assignee, as the representative of the creditors in general, as well as foreign creditors specially, may apply, according to the modern Roman law, in foreign countries where the estate has assets, for an attachment of such assets. In the practice of the United States courts, a foreign bankrupt assignee has, as such, no standing in the courts, though, if there be no conflict with his assignor or with creditors, he may be recognized as the representative of the assignor," citing Perry vs. Barry (1 Cr. C. C. R., 204); Blaine vs. Drummond (1 Brock., 62); Hunt vs. Jackson (5 Blatchf., C. C. R., 349).

A jurisdiction which depends on the comity of another nation cannot be jurisdiction, except in that country of which the comity is asked.

One other point still remains, and will be considered as briefly as possible.

The only relief asked for in this bill, except injunction (and that question is not now to be looked at), is that these defendants be required and enjoined to assign and transfer all their right to the fund to this complainant as assignee in bankruptcy.

On the complainant's own showing, why should that be decreed? He says it belongs to him under McDonald's bankrupt assignment. If that be true he needs no other assignment; he may assert his rights quite as well without the relief he asks as with it. Either way he must apply to the British Government or the British courts. An assignment made under an order of this court would be an assignment in invitum, not a voluntary sale. It would have no effect, therefore, except such as it might derive under the doctrine of international comity. That much, and even more, this complainant already has under the assignment in bankruptcy. The English courts, it is well known, have gone further with the doctrine of comity in favor of the bankrupt proceedings of other countries than of any other class of foreign judgments or decrees.

But suppose we were to decree according to the prayer of this bill, and the defendant should refuse to obey our decree; we should then find ourselves in the position alluded to by the lord chancellor in Blake's case. We must commit him, and yet, in contemplation of our law, the very instrument he is required to execute is of no effect in itself, and might involve this government in another controversy with Great Britain over the treaty of 1871.

These doctrines, we think, are entirely consistent with the doctrine of Penn vs. Lord Baltimore (1 Ves., 444), Massie vs. Watts (6 Cr., 148), and other cases of the same purport, in which the courts have held that in case of fraud, of trust, or of contract, the jurisdiction of a court of chancery is sustainable wherever the person be found, although property not within the jurisdiction of that court may be affected by the decree. For in the present case no fraud is charged in the bill—there is no trust and there is no contract. The whole controversy is between two distinct claims of title to the property.

In Penn vs. Baltimore, the chancellor said:

"This court, therefore, has no original jurisdiction on the direct question of the original right of boundaries;" and Chief Justice Marshall, in Massie vs. Watts, adds, after quoting this opinion of the lord chancellor: "The reason why it had no original jurisdiction on this direct question was that the decision on the extent of those grants, including dominion and political power, as well as property, was exclusively reserved to the king in council." And in another place the Chief Justice said: "The inquiry, therefore, will be whether this be an unmixed question of title or a case of fraud, trust, or contract."

It is but justice to the learned counsel by whom this case was argued to say that our decision in this cause has been placed upon grounds which seemed most satisfactory to our minds, and that in doing so we do not wish to be understood as expressing an opinion one way or the other on those other numerous questions which were discussed on that occasion, and not now passed upon, for the reason which has just been stated.

Cartter, Ch. J., and Olin, justice, dissenting.

181 In the supreme court of the District of Columbia, the 4th day of April, 1876.

THOMAS J. PHELPS, ASSIGNEE IN BANKRUPTCY, *vs.* AUGUSTINE R. McDONALD & WILLIAM WHITE. } No. 3910. Equity.

Know all men by these presents that we, Thomas J. Phelps, assignee

in bankruptcy of Augustine R. McDonald, and Daniel W. Bell and A. F. Shapleigh, are bound unto the above-named Augustine R. McDonald and William White in the sum of one thousand dollars, to be paid to the said Augustine R. McDonald and William White, their executors or administrators. To which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this 25th day of March, 1876.

Whereas the above-named Thomas J. Phelps, assignee, hath prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is that if the above-named Thomas J. Phelps, assignee as aforesaid, shall prosecute his said appeal to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

DANIEL W. BELL. [SEAL.]
A. F. SHAPLEIGH. [SEAL.]
T. JEFF. PHELPS. [SEAL.]

Sealed and delivered in presence of—
E. T. ALLEN, to D. W. B.
WALKER HARTWELL, as to T. J. Phelps.

Approved this 4th day of April, A. D. 1876.
[SEAL.] D. K. CARTTER,
Chief Justice.

Clerk's certificate.

CLERK'S OFFICE,
Supreme Court of the District of Columbia:

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals, together, constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 29th day of September, 1876.

[SEAL.] R. J. MEIGS, *Clerk.*
By L. P. WILLIAMS,
Assistant Clerk.

(Indorsement on cover:) No. 251. Thomas J. Phelps, assignee, appellant, vs. A. R. McDonald and William White. Dist. of Col. sup. court. Filed 16th October, 1876.

In the Supreme Court of the United States.

OCTOBER TERM, 1878.

THOMAS J. PHELPS, ASSIGNEE, *Appellant*,
vs.
A. R. McDONALD & WM. WHITE.

No. 254.

Brief for the Appellant.

This is an appeal from a decree of the Supreme Court of the District of Columbia.

The bill of complaint filed by the appellant against the defendant McDonald sets forth the following facts:

On the 19th December, 1868, in the District Court of the United States for the Southern District of Ohio, on his own voluntary petition, the said McDonald was declared a bankrupt, and the appellant was appointed assignee, and received in due form the usual assignment of all the personal and real estate of the said bankrupt.

In the schedule of assets filed by the said bankrupt among others appears this item: "Claim against General Osborne, U. S. Army, and others for burning, in January and February, 1865, from 1,000 to 2,000 bales of my cotton in Arkansas and Louisiana." This is the only description of the claim, except that in the duplicate schedule filed in the office of the register of bankruptcy of said court the amount is stated at 7,000 to 8,000 bales, and the claim, with others, is designated as "worthless."

The defendant McDonald, March 17, 1869, received his discharge, and the appellant, as assignee, sold certain assets of the bankrupt at public sale, when the defend-

ant, White, became the purchaser of the uncollected accounts belonging to the estate for the sum of $20. The purchase was made for the defendant McDonald with money furnished by him, and the claim was promptly transferred to him by White. Rec., p. 35.

Prior to the filing of his petition in bankruptcy the defendant McDonald had a just and valid claim against the United States for certain cotton destroyed by the army during the late civil war; and being a British subject, although long resident in this country, he prosecuted his said claim before the Joint British and American Commission under the treaty of May 8, 1871, between the United States and Great Britain, appointed to examine and adjudicate all claims by the subjects and citizens of either government against the other. The said claim of the defendant McDonald was finally adjudged to be valid, and on the 25th September, 1873, the said Commission awarded the sum of $197,190 "to be paid in gold by the Government of the United States to the Government of her Britannic Majesty *in respect of the above claim.*"

McDonald's memorial to the Joint Commission was made an exhibit to the bill of complaint, and this shows the particular character of the said claim against the United States, as arising from purchases of cotton made by McDonald in the insurrectionary States under permits from the Secretary of the Treasury and letters from the President of the United States, the subsequent repeal of the laws authorizing such permits before he could remove the said cotton, the prevention of such removal, and the final destruction of the cotton by the army. Rec., p. 29

The appellant insisted that this claim, thus arising from an alleged obligation of the United States to protect the defendant McDonald in the possession of the cotton destroyed, is not the claim that was described as aforesaid to the schedule of assets, and was not sold by the assignee in the defendant White, and afterwards assigned by the

said White to McDonald; that the description in the schedule of a claim against "General Osborne and others" for burning his cotton, without more, did not describe a claim against the United States arising from a violation of permits given by the President to the claimant, and that the designation of the claim as worthless added to the description given was well calculated to mislead, and that the rules of the Joint Commission required all assignments of claims to be stated, which the defendant McDonald did not do in this case, but prosecuted his claim upon his original title.

The appellant therefore insisted that the aforesaid award was made to the defendant McDonald on his original title to the claim, and not on the title derived by purchase through White from the assignee in bankruptcy, and that the said award ought rightfully to be paid to the appellant as assignee for the benefit of the creditors of said bankrupt, whose claims are stated in the schedule of debts by McDonald himself at the sum of $177,380. The only sum ever realized from the estate of the said bankrupt was the aforesaid sum of $20, derived from the sale to White.

The bill then alleged that the sum awarded by the Joint Commission ($197,190) is about to be paid the defendant McDonald by an agent of the British government in the city of Washington, and prayed an injunction restraining him from receiving the same, and a decree that the said fund shall be held in trust for the creditors whose demands are established in the bankrupt case aforesaid, and subject to the rights of the appellant as assignee.

An amended bill was afterwards filed making the defendant White a party, and alleging that since the award aforesaid McDonald had assigned the same to the said White, "who took the said assignment with full knowledge that said McDonald had no valid title thereto." Transcript, p. 35.

Process was served on both defendants in Washington; the injunction was allowed, and the defendants answered (Rec., p. 37), and the plaintiff filed replication. Rec., p. 47. Subsequently, by consent of parties a decree was made allowing one-half of the amount of the award to be received by the defendants to pay the expense of prosecuting the claim before the Joint Commission, and the other half to be placed in the hands of a receiver to await the final judgment of the court, and decreeing that McDonald execute all orders, receipts and acquittances necessary to enable the receiver to obtain the fund. P. 48.

Although an answer had been filed, (Rec., p. 37) the defendants filed a demurrer, (Rec., p. 49), and the cause came on to be heard on the demurrer of the defendants. The grounds of demurrer stated are, in effect, these:

1st. That the court below had no jurisdiction of the case, but that the exclusive jurisdiction remained with the District Court of the United States for the Southern District of Ohio.

2d. That the bill was not filed within two years from the time when the cause of action accrued.

3d. That the claim against the United States did not give any right of action either to McDonald or to the plaintiff as his assignee in bankruptcy, and that if it gave any right of action it was an action for tort, and did not pass to the assignee by virtue of any law of the United States.

4th. That it appears by the plaintiff's bill and by the the treaty of May 7, 1871, between the two governments, that no ground or right of action against the United States ever existed in favor of said assignee by virtue of the assignment in bankruptcy.

The court below sustained the demurrer, and decreed that the bill be dismissed, and that the receiver pay over to the defendants the money in his hands. The appellant immediately appealed, and in due time gave ap-

proved security, to the general term. In general term the decree was affirmed, two judges out of three dissenting, and the opinion being delivered by the judge who decided the cause below, and who, by virtue of the act of February 25, 1879, would now be incompetent to sit in the case.

Thereupon the cause was appealed to this court.

Argument.

I.

1. The first cause of demurrer is that the court has no jurisdiction, because the district court in which the proceedings in bankruptcy were had, has exclusive jurisdiction.

It was decided in Johnson's Assignee *vs.* Bishop, 1 Woolworth, C. C. R., 326, that an assignee may sue in any court of competent jurisdiction to recover the assets of the bankrupt. Mr. Justice Miller in that case said it was a presumption not to be indulged that a State court would refuse to recognize the legal right of the assignee.

In Lathrop *v.* Drake, 91 U. S., 516, it was held that an assignee in bankruptcy could maintain a suit in a circuit court of the United States in any district for the recovery of assets, and, incidentally (p. 518) that the State courts also might be resorted to for the recovery of debts.

See, also, Eyster *vs.* Gaff, 91 U. S., 521.
Burbank *vs.* Bigelow, 92 U. S., 179.
Claflin *vs.* Harriman, 93 U. S., 130.

The Supreme Court of the District of Columbia has all the jurisdiction of a circuit court of the United States.
R. S D. C., sec. 760, p. 91.

2. The second cause of demurrer is, that the suit is barred by the limitation of two years, counting from the 12th day of February, 1869, when the assignee received the deed of assignment.

The answer to this is that the right of the assignee as

against the defendant accrued not until the award was made. It was so ruled in Clark *vs.* Clark, 17 Howard, 321, 322.

The Court said: "The interest adversely claimed, and which the statute protects, is an interest in a claimant other than the bankrupt; but supposing that Ferdinand Clark had been placed in that condition, as to the fund in the Treasury, by his pretended purchase of his own assets, yet, as no cause of action accrued to the assignee in bankruptcy against Clark until he got possession of the money, and as he never held the fund adversely, it follows that the act does not apply."

3. The third cause of demurrer is that, at the date of the assignment McDonald had no right of action against the United States, and the claim did not pass to the assignee.

The answer is that McDonald's claim was for the distruction of his cotton. It is averred in the bill to have been a *valid* claim, (Record, p. 1, fol. 1,) and the decision of the Commission averred in the bill, Rec., p. 2, fol. 6, is conclusive of its validity. Comegys *vs.* Vasse, 1 Pet., 193.

The "adjudication of the bankruptcy and the appointment of the assignee," vest in the assignee all cause of actions "which the bankrupt had against any person, arising from contract upon the unlawful taking or detention or of *injury to the property of the bankrupt.*"

Rev. Stat., 5046.

A claim against the government passes in the same manner as a claim against a private person.

Comegys *vs.* Vasse, 1 Pet., 193, 216.

Milner *vs.* Metz, 16 Pet., 221, 227.

It is not necessary to the character of the claim that it should be one capable of enforcement by legal proceedings. A claim upon the justice of a foreign nation, or of the

Congress of the United States, passes by proceedings in bankruptcy.

Comegys *vs.* Vasse, 1 Pet., 193, 216.
Clark *vs.* Clark, 17 Howard, 315.
Milner *vs.* Metz, 16 Pet., 221, 227.
See Sheppard *vs.* Taylor, 5 Pet., 707.
Frevall *vs.* Bache, 14 Pet., 95.

The court below said in this case: "So far as the claim in question could be effected by the laws of this country, it did pass to the assignee in bankruptcy, according to the principles in Comegys *vs.* Vasse." Rec., p.

4. The fourth cause of demurrer is, that the cause of action, if any, did not exist in McDonald, but in the British government.

McDonald was a resident of the United States (Bill, par. 2), and his claim was against the United States. The British government intervened by treaty to secure justice to its subjects, and the fund provided for that purpose is averred to be in the District of Columbia. (Bill, par. 2.)

The authorites above cited which show that a claim against foreign powers pass, by bankrupt proceedings, from the claimant to his assignee, conclusively show that the claim is the property of the injured person and not of his government.

II.

The Court did not sustain any of the grounds of demurrer taken by the defendants, but rested their decree upon other and distinct grounds, as will be seen by reference to the opinion of the court delivered in general term. The majority held that McDonald had a good title by purchase from the assignee, that the claim was sufficiently described in the lists and was worthless, but that the British government took it up, and by paying equivalents to the

United States, procured its allowance, and that the money was awarded to the British government, and, in contemplation of law, was in England and beyond the jurisdiction of this court.

The part of the case concerning the validity of the purchase at the assignee's sale, the description of the claim in the schedule, and the designation of it as "worthless," the learned justice of the court below discusses elaborately in his opinion, pp. 55 to 59.

He insists that the claim is well described; that "the act of General Osborne was the act of the Government, which was responsible for his conduct, and this was known, so that it was substantially a statement that the claim was one against the Government." We deny the validity of the principle here asserted. The Government is not always responsible, pecuniarily, for the acts of its military officers. And in this case the mere burning of the cotton, without the other peculiar circumstances, would not have made either General Osborne or the Government responsible for the consequences, and the claim against Osborne was barred by the acts of March 3, 1863, ch. 81, 12 St., 756, and May 11, 1868, ch. 80, 14 St., 46.

We insist that the actual claim was not in the schedule, and therefore was not sold to White for McDonald at the assignee's sale.

III

But supposing the claim to have been well described, so as to entitle it to be considered as actually in the schedule, we insist that the description was so utterly inadequate to give a fair knowledge of the nature of the demand, that it was well calculated to mislead all parties and to prevent a just estimate of its value at the assignee's sale. The designation, "worthless," in one of the schedules, served to aid and increase this deception.

And again the order of the court was to sell "certain

accounts, notes, judgments," &c., and the sale was of the "uncollected accounts." Bill, Rec., p. 3, par. 7. This allegation (and there is nothing else) does not show the sale of the claim in question to White, and so far as appears, the title never passed from the assignee. It is charged in the bill as a mere pretence of McDonald, contradicted by the facts and by his own memorial before the Commission. It is no part of the complainant's case.

The learned judge in his opinion objects that the bill does not charge a fraudulent motive as to the statement of this item in the schedule, but only "that it was calculated to mislead as to its value." We submit that this is virtually a charge of fraud. The circumstances which constitute the fraud are most distinctly stated, although they are not actually characterized and stigmatized by that potential word, fraudulent. This is sufficient, we think, and brings the case distinctly within the principle of the case of Clark *vs.* Clark, 17 Howard, 315, and sufficient to cause for that reason the overruling of any demurrer. Adams' Eq., 336, * *in notis.*

IV.

But the learned opinion in the transcript goes further. It contains a most elaborate argument, showing not only that the defendant was justified in reporting the claim in his schedule as worthless, but that it was so in fact. "I propose now to go further," says the opinion, "and show from the face of the bill and exhibits that the claim was utterly without foundation or value at the date of the proceedings in bankruptcy, and that White who bought it for $20 paid more than its worth." P. 56.

We do not propose to follow the learned justice in his argument and authorities. Whatever the court below may think on the question, it was determined by the treaty tribunal, whose decision is final and conclusive; so much so, that even this court will not undertake to

question it. That tribunal determined that the claim was worth just $197,130, a little more than enough to pay McDonald's creditors. We stand on this fact, and insist that the value of the claim is established by unquestionable authority.

In Comegys vs. Vasse the Court said: "The object of the treaty was to invest the Commissioners with the full power and authority to receive, examine and decide upon the amount and validity of the asserted claims upon Spain for damages and injuries. *This decision*, within the scope of their authority, is conclusive and final. 1 Pet., 122.

V.

The learned judge who gave the opinion below argues strenuously that we ought to have exhibited in our bill McDonald's permits and his letter from the President, and all the documents necessary to show the validity of McDonald's claim. We ought also to have shown the Treasury regulations, for, says the opinion, "it was indispensable to show in this bill that McDonald's license was in strict conformity to these regulations." We thought it sufficient that McDonald himself had exhibited all these documents, and proved the necessary facts, before the Joint American and British Commission. We thought the final award of that high international tribunal justified us in assuming that everything had been done which was necessary to sustain that judgment. In this simple belief we rest before this supreme tribunal, and respectfully decline to follow the learned judge of the court below into the questions which have already been settled beyond all possibility of ever being disturbed.

VI.

The opinion, p. 59, further says: "if his story be true, the cotton was lost by his own neglect, and his claim

against the United States or General Osborne was indeed, as he stated, utterly worthless. He knew this better than any one else, and marked it so in his schedule." This seems extraordinary coming from the majority of the court below. The case was heard on demurrer, which, we believe, admits the truth of the statement in the bill. But the bill alleges that McDonald had a good and valid claim against the United States, and it produces the memorial to the Joint Commission and the award of that tribunal, as evidence of these facts. It is in the memorial that the particulars are stated of the Treasury permits, the letters of the President, &c.

These documents, it may well be supposed, were all satisfactorily proved before the Commission. How then can the defendant be permitted to come into a court of justice and deny the validity of these documents? Or on what principle can a court assume them to have been illegal and insufficient, for the purpose of enabling the defendant who obtained the money by them, to keep it himself and prevent his creditors from reaching it? If the claim was valid in the judgment of the Joint Commission and yielded $197,190, as alleged in the bill, then it was not worthless as represented in the schedule; and there is no principle of law or equity, so far as we know, which would authorize the defendant to attempt to show the falsity of his proofs, much less to allow that falsity to be assumed on a demurrer, in direct opposition to the allegations of the bill.

VII.

The rest of the opinion goes to the jurisdiction of the court. The sum and substance of it is that the money awarded was to be paid to the British government, and not to the claimant, McDonald; and the learned Judge goes so far as to say: "The British government is the tribunal created by the treaty itself, to dispose of the

money. With the manner of performing that duty, neither this Government nor any of its courts can interfere. The treaty determines that question."

This is a new view of the subject—new, we venture to say, to the British government itself. There was a "tribunal" created by the treaty to adjudicate the claims of individuals, and the awards were to be paid to the respective governments for the benefit of the individuals. The British government was simple enough to have the amount of every individual award put into the form of a check, by the Treasurer of the United States, on the Treasury, payable to the order of the British Minister, who invariably endorsed the check to the claimant, or to his assignee. These received the money in the city of Washington. The bill alleges that the money was in the District of Columbia, (Rec. p. 1, par. 2 of bill) and that it was about to be paid to the defendants in Washington, (Rec., pp. 2 and 4), which proved to be so far true that the fund was actually brought into court, and disposed of by its order. In the face of this unquestionable fact, the learned Judge proceeds to say: "The fund in controversy in the present case is in England for all the purposes of this case, and, since its payment, has never been within the United States." (p. 61.) Having thus argued the money, which was actually in his own court, out of his jurisdiction and into England, the learned Judge goes on to quote authorities to the effect that an assignment in bankruptcy does not convey property in a foreign country; but the authorities cited by the learned Judge show that by the laws of England the bankruptcy proceedings were sufficient to transfer the fund to the assignee, if the fund had really been in England.

Undoubtedly the British Government might have refused to pay the money in this country at all. But our courts could have compelled the defendant to execute an assignment of the fund, and with such assignment the

assignee could assert his rights in the proper tribunals of that country, and the execution of such an assignment was prayed for in the bill. The learned judge scarcely intends to maintain that England was made a "tribunal" with power to determine that McDonald's creditors should not have this money, or should not have an opportunity to show their title to it. Even if there was any such supposed authority, the English agent seems to have had very wise and just instructions from his government on the subject, for he did not interpose any objection whatever to the adjudication by our courts of such questions as those which arise in this case. There is no prejudice in England against just creditors, nor any disposition to aid a fraudulent debtor to evade their legal demands.

But even if the fund had been in England and in the hands of the British government, that fact would not deprive this court of jurisdiction. This subject is discussed and disposed of in Story's Equity Jurisprudence, secs. 899 *et seq.*, where it is said that, as the courts of a country have authority to control all persons within their own territory, they may, when both parties are resident within their jurisdiction, act *in personam* upon those parties, and, without pretending to control the foreign court, and "*without regard to the situation of the subject-matter of the dispute, they consider the equities between the parties, and decree in personam, according to those equities, and enforce obedience to their decrees by process in personam.*

Conclusion.

We submit that the decree should be reversed and the cause remanded for further proceedings.

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In the Supreme Court of the United States.

THOMAS J. PHELPS, ASSIGNEE, APPELLANT,

vs.

A. R. McDONALD AND WM. WHITE, APPELLEES.

No. 254.

Appeal from the Supreme Court of the District of Columbia.

POINTS FOR APPELLEES.

1. McDonald received his discharge in bankruptcy on the 17th day of March, 1869. In September, 1869, the assets of the bankrupt, including the claim in question, were sold by the assignee and purchased by Wm. White, who assigned it to McDonald. This was a fair and legal transaction, and vested the title to the claim in McDonald.

2. There was no concealment by McDonald of the condition or supposed value of the claim to bring the case within the principle of Clarke *v.* Clarke, 17 How., 315.

3. The day before his discharge, McDonald was examined on the application of his assignee, when he and the creditors had opportunity to ascertain fully about this claim. The examination is not filed with the bill.

4. At the time of the sale by the assignee and purchase